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ARE WE  
BETTER OFF  
ON THE INSIDE?

END  
TRAFFICKING  
NOW

LABOUR  
RIGHTS



Palermo Protocol 20<sup>th</sup> anniversary special  
Are we better off on the inside?

Joel Quirk, Neil Howard and Cameron Thibos (eds.)

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## INTRODUCTION

# Are we better off on the inside? Modern slavery and human trafficking as platforms for political mobilisation

Joel Quirk

This piece begins with an election. Not the election you're probably thinking of, but one which took place sufficiently long ago for its initial notoriety to have faded with time. We need to go all the way back to 2001, when the then Australian prime minister, John Howard, unexpectedly won re-election on the back of a campaign primarily based on the demonisation of asylum seekers. Howard infamously [declared](#) that "we will decide who comes to this country and the circumstances in which they come." He also used [military force](#) to prevent a Norwegian vessel that had saved the lives of 438 asylum seekers from entering Australian waters. These asylum seekers were predominantly from Afghanistan. They were fleeing a repressive Taliban regime against which [Australia was soon to fight a war at the side of the United States](#), yet relatively few Australians were sympathetic to their plight. Two months later, sensational claims that asylum seekers on another sinking vessel had thrown their [children overboard](#) were front page news. They were later revealed to be false.

Howard's xenophobic tactics continue to define Australian politics to this day. In 2001, he introduced policies which saw asylum seekers attempting to reach Australia by boat detained in [hugely expensive](#) and [extremely abusive offshore detention](#) centres. These have been consistently described as "[a living hell](#)", "[a human rights catastrophe](#)", and "[unlawful](#)"; yet they still command broad support within Australia. Efforts were made to roll back Howard's 'Pacific solution' when a centre-left government led by Kevin Rudd finally took power in 2007, but relentless right-wing attacks accusing his party of being 'soft' on migration proved to be

a huge liability. Offshore detention would be re-established under a left-wing government, and the vast majority of Australian politicians have now spent most of the twenty-first century seeing who can yell '[stop the boats](#)' the loudest. Howard's approach to immigration continues to be cited as a model which is worthy of emulation by right-wing voices in many countries.

Many governments throughout the globe have poor track records when it comes to migration. They have little sympathy for people seeking refuge, no matter the circumstances from which they are trying to escape, and they pride themselves on their 'toughness' when it comes to turning away requests for help. At the same time, however, governments such as Australia's have also proclaimed their sympathy and support for another vulnerable group: victims of human trafficking and 'modern slavery'. In 2018, the Australian government introduced new anti-slavery legislation, declaring its intention to "[harness the power of big business to help combat modern slavery](#)" while also continuing to work with "our tireless civil society partners". This legislation has been widely celebrated. The national manager of the Salvation Army's Freedom Partnership to End Modern Slavery even declared that "[it's not quite Wilberforce ending slavery but it's up there](#)".

Numerous governments have congratulated themselves and their peers for passing similar legislation in recent times. The Canadian government is currently considering [its own Modern Slavery Act](#), which is closely modelled upon the Australian and British versions, and a similarly warm reception can be expected. In stark contrast to the issue of mi-

grant rights, these official efforts against trafficking and slavery draw support from across the political and ideological spectrum and have been endorsed by both corporate and civil society voices. While the Australian government has signed the Palermo trafficking protocol, it was one of a number of states which [strongly objected](#) to the Global Compact on Migration, despite its non-binding character.

### [The tactical appeal of human trafficking and modern slavery](#)

The very different political profiles of the two main issues considered above help to bring a series of strategic and tactical considerations into focus. Over the last three decades, governments, corporations, and many other institutions have publicly championed efforts to combat trafficking and modern slavery. These efforts are said to be motivated by humanitarian concerns for the most vulnerable and exploited, yet this concern rarely extends to other forms of vulnerability.

As we have already seen, it is really not a good time to be a migrant. Border walls have been built in huge numbers ([from 15 in 1989 to 77 in 2018](#)). [Xenophobia has flourished](#). Budgets to prevent migration are [measured in billions](#). Moreover, this widespread hostility towards migrants frequently intersects with another major global trend: [the erosion of rights and protections for precarious workers](#) thanks to outsourcing, subcontracting, and deregulation. In recent decades, campaigners focusing upon migrant and worker rights have lost countless political battles. And, on the rare occasions when they manage to hold or take ground, their efforts are subject to entrenched opposition.

The appeal of anti-trafficking and modern slavery campaigns needs to be understood within this larger context. The political obstacles associated with migration and work have led at least some campaigners to try to identify more promising platforms of mobilisation, and in the course of their search they have gravitated towards trafficking and slavery, which have a quite different political profile. Since modern slavery campaigns command an un-

usual level of bipartisan support, they can open up avenues that are not readily available when it comes to worker and migrant rights. They may not be an effective platform for advocating for radical social and economic change, but they may provide a useful fall-back position if you have made a tactical decision that limited gains are better than none.

Modern abolitionist campaigns also enjoy other political advantages. Migrants and workers frequently have complex (and contestable) life stories and do not necessarily regard themselves as victims. This is much less of a challenge in the case of modern slavery, which tends to be strongly associated with simplistic narratives of ‘innocence lost’ and ‘good’ and ‘evil’, which have proved to be a powerful mechanism for [attracting interest and investment](#). Few corporations are interested in supporting workers’ rights, since they associate improvements in this area with higher labour costs, yet they frequently [endorse](#) anti-trafficking and slavery campaigns, which are regarded as politically ‘safe’. Similarly, governments who are criticised for their human rights abuses also find modern slavery campaigns appealing, since they cast them in the [role of saviour and protector of the most vulnerable](#).

When all of these considerations are put together they point to a crucial yet rarely acknowledged cost-benefit calculation: many different constituencies have made a tactical decision that campaigns focusing upon trafficking and slavery are more attractive than other potential alternatives. Doors are opened which might otherwise have remained closed. New sources of access, influence, and resources can be developed. Governments and corporations who might otherwise have been indifferent or opposed to other kinds of causes are also inclined to sign on in support, since it also serves their own agendas.

### [Are we better off on the inside?](#)

These kinds of tactical calculations do not feature prominently in public conversations regarding trafficking and slavery. This is partly because they tend to be portrayed as exceptional problems which



stand apart from – or above – most other political causes, and partly because talking too openly about your political strategy also runs the risk of undercutting your strategy. Calculations regarding potential trade-offs and benefits mostly take place behind the scenes. There are times, however, when this public façade is breached. Activists and insiders who work on modern slavery and trafficking are generally reluctant to speak too openly, but there is one common refrain that comes up time and time again in private meetings and off the record conversations: we are better off on the inside.

This is an old refrain. Political campaigners have grappled for centuries with the question of whether it is better to try and reform things from within than to challenge them from without. There are

levels of public endorsement, access, and private and public funding that campaigners working on more politically challenging causes can only envy. This is especially true of campaigners in the Global North, who comprise the vast majority of this field. It has become clear, moreover, that modern slavery and trafficking are now ‘where the action is.’ Since the mid 1990s, a tremendous amount of interest and activity has been focused upon modern slavery and trafficking, and this level of interest has only further increased with time.

One key measure of this activity is the passage of new laws. In 2018, the [United Nations Office on Drugs and Crime](#) reported that 168 states “[have legislation in place that criminalizes trafficking in persons](#)”, marking a remarkable jump [from 33](#)

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“Political and economic elites tend to favour self-serving and lowest common denominator approaches which don’t rock the boat.”

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two key versions of this recurring dilemma when it comes to trafficking and slavery. The first is concerned with the relationship between these and other causes, such as migrant and worker rights. In this context, being ‘on the inside’ means using trafficking and slavery as a primary basis for activism and advocacy, since it is believed to help facilitate greater levels of attention, influence, and resources. The second is concerned with the relationship between modern abolitionist campaigners and political and economic elites. In this context, being ‘on the inside’ means trying to establish alliances with governments and corporations in order to nudge them in more favourable directions.

There are costs and benefits to life on the inside. Let’s start with the latter. Campaigners working on modern slavery and trafficking frequently enjoy

[states in 2003](#). This means that 135 countries – or around 73% of all states in the UNODC database – passed new legislation within a fifteen-year period. This constitutes one of the most intense periods of legislative activity in the history of human rights.

A raft of other activities have accompanied these new laws. Criminal justice reforms have been a global focal point. Specialised taskforces, bureaucratic processes, training programmes, and victim protection measures have all sprung into existence. New regional and bilateral agreements have been signed. [Global alliances have been established. Celebrities have been mobilised.](#) Numerous movies and documentaries have been released. [Countless marches have taken place.](#) All of these efforts have generated a tremendous amount of attention and investment, and insiders and campaigners have

been kept very busy trying to harness all the energy that trafficking and slavery have unleashed. Many campaigners and organisations working on related issues have also seen the writing on the wall, and have therefore strategically taken up the trafficking and slavery cause as well.

Most insiders are confident that all of these initiatives are having a cumulative and positive effect. Police and prosecutors can point to the criminals they have prosecuted and the victims they have rescued. Service providers can point to the additional resources they have to provide support. Lawyers can point to legislation that provides at least some provisions for victim protection. Bureaucrats can point to new protocols and procedures that better equip them to take action. Corporations can point to their public commitments and internal policies and procedures. Diplomats can point to the reforms which they attribute to public shaming and quiet negotiations. Campaigners can point to increased public interest and awareness. Insiders accept that there may be problems with some campaigns or interventions, but contend that these are overshadowed by all the good things which are taking place.

Many insiders also see the energy lighting up their activism as a political resource that can potentially be deployed – or stretched – in order to advance larger political causes and alter political conversations. Taken to its logical conclusion, this approach suggests that there may not be any need for trade-offs, since concerns about modern slavery can also be harnessed in order to draw attention to the plight of other precarious and vulnerable populations. When modern slavery campaigns focus upon extreme abuses on shrimp boats in South East Asia, then doesn't this also create a platform for challenging poor working conditions more generally? This overall approach is sometimes described in terms of stepping stones, where targeting extreme abuse is portrayed as the first step in a longer term and more ambitious political project. The first steps may well be modest, but surely [more ambitious second and third steps can be anticipated in the future?](#)

### [Are we really better off on the inside?](#)

The case for life on the inside builds upon the claim that modern slavery and trafficking provide an unusually effective platform for securing real world gains. It is important to recognise, however, that the calculus is considerably more complicated than simply declaring that something is better than nothing. There are three main considerations that need to be highlighted here: 1) it is not clear that all of the energy expended has been especially effective in practical terms; 2) campaigns against modern slavery and trafficking can be deeply compromised by other political agendas; and 3) there are times when interventions targeting trafficking and slavery [cause more harm than good](#).

The first question regarding efficacy is hard to evaluate. Changing the world has never been easy, so it is reasonable to anticipate that many mobilisations will struggle to have a practical effect. Campaigns of all stripes find it difficult to get off the ground. This is clearly not the case on this occasion, so it's important to ask how much of the energy expended has actually translated into practical gains. As we have seen, campaigns against modern slavery and human trafficking have been able to secure an unusual level of support from many governments and corporations. However, this support frequently comes at a practical price, since political and economic elites tend to favour self-serving and lowest common denominator approaches which don't rock the boat. This results in a paradoxical situation where many high-profile solutions to the problems associated with trafficking and slavery end up being both politically appealing and practically ineffective for the same reason: they rarely challenge dominant political and economic interests.

One illustration of this larger dynamic involves campaigns which seek to 'raise awareness' of trafficking and slavery. These are extremely popular in both policy and activist circles, but it is far from clear whether they have [much if any positive effect](#). They may even cause harm by promoting racial and gender profiling or by triggering false positives, where people are wrongly treated as suspected traf-



ficking cases because they somehow 'fit the signs'. Similar concerns also apply to popular training programmes for taxi drivers, hotel and airline staff, and immigration agents.

The recent proliferation of 'apps' focusing upon trafficking does not really help much either. Over the last two decades numerous claims have been made about the power of technology as a weapon in the fight against modern slavery, but many of the claims which have been made about technology are based upon future potential. Technological 'solutions' risk being the train that never actually arrives at the station, and instead primarily operate in the realm of [technocratic fantasy](#).

The lots-of-smoke-but-no-fire critique can be equally levied at [corporate social responsibility \(CSR\) schemes](#). These are supposed to encourage voluntary action to combat trafficking and slavery in global supply chains, but their main value from a corporate standpoint is their capacity to help deflect calls for binding public regulation. The central idea behind CSR is that enlightened corporations can play a key role in reducing modern slavery. While this sounds good in theory, the discretionary nature of the entire exercise means that corporations consistently avoid taking actions which go against their own interests, and many of them have a direct interest in depressing wages, conditions, and margins in ways which directly enable various forms of exploitation and abuse.





Further complications arise when it comes to criminal justice reforms. Investing in criminal justice will always be the politically ‘safe’ option, since efforts to more effectively prosecute criminals is a cause which commands high levels of support. The main drawback with this approach is that it consumes a large amounts of institutional bandwidth, and therefore leaves relatively limited scope for alternatives. When criminal justice models prove to be ineffective and disappointing, which has been the dominant pattern to date, the somewhat paradoxical response has been to invest even further in criminal justice models in the hope of getting things right the next time. The fundamental problem here is that criminal justice responses focus on symptoms, rather than underlying causes. Modern slavery and trafficking [are issues which are unlikely to be effectively resolved via prosecutions](#).

Many of these high-profile ‘solutions’ are also marked by a reluctance to engage too deeply or directly with questions of economic and political interest. It is instead assumed that nearly everyone must be on the same side, since all people of good will are united in their opposition to extreme abuse. This contributes in a widespread tendency to treat trafficking as a technical challenge, and thereby fail to sufficiently engage with the fraught relationship between policies, interests, and larger agendas.

It has proved very easy to justify any number of policies in anti-trafficking or anti-slavery terms. Recent efforts to heavily restrict mobility by building a literal wall in the US or a metaphorical fortress in Europe are not motivated by concerns about the plight of migrants. Yet they have nonetheless been justified in humanitarian terms to prevent the criminal schemes of human traffickers. As [Melissa Gira Grant has demonstrated](#), Donald Trump has invoked trafficking to give “... his ‘big, beautiful wall’ a humanitarian gloss, while stirring up racist panic about immigrants from Mexico and Central America, who, Trump says, use ‘blue tape’ to gag women and girls, ‘tying up their hands behind their back and even their legs’—a disturbing, baseless detail Trump mentions frequently”.

Corporations have also found that narrowly focusing upon individual cases of ‘exceptional’ abuse is an effective strategy for displacing or deflecting concerns about how they treat their workers more generally. When Ivanka Trump denounces modern slavery as an [“ugly stain on civilization”](#), she is not thinking of the Trump-branded products [made by precarious and vulnerable workers in places such as Indonesia](#). Campaigns focusing upon modern slavery often leave larger systems at the margins of the frame. They may not only be ineffective. They may also end up indirectly legitimating the global economic systems which manufacture systems of vulnerability and abuse in the first place.

Some of the negative effects of anti-slavery and anti-trafficking interventions have come to be described in terms of [“collateral damage”](#). These damages include police abusing people they are supposed to be rescuing and immigration agents deporting migrants captured in raids. They are particularly acute in the case of commercial sex work, where [all kinds of harmful external interventions, such as bans on advertising sex work online, have been chiefly justified](#) in terms of combating sex trafficking. Further problems have also been identified in relation to ‘raid and rescue’ operations, which involve kicking down doors to arrest villains and rescue victims.

While rescue and rehabilitation sound good they frequently fall short in practice. People who have been ‘rescued’ can be subject to deportation proceedings or forcibly incarcerated in poorly run and unsafe ‘care homes.’ These homes are [notorious in India](#), where sex workers who have been ‘rescued’ routinely end up running from their ‘rescuers’. For many sex workers, campaigns against trafficking and slavery can be best understood as a stalking horse for a longstanding political agenda which seeks to [deny the legitimacy of sex work](#) as work. Not everyone who works in this field has the same attitude towards sex work, but the frequently negative effects of these campaigns and interventions for sex workers raises challenging questions about the costs and benefits of life on the inside, since it is other insiders who are targeting sex work.



### Inside? Outside? Do we really need to choose?

Once all of these considerations are placed on the table the cost/benefit calculus becomes very challenging. Insiders can point to positive gains, yet questions remain about the extent to which their activities end up helping to both legitimate and disguise other political and economic agendas. Outsiders may be less compromised, yet they may also find it difficult to advance their goals, since campaigns focusing upon migrant and worker rights have been on the back foot for decades now. Campaigns against human trafficking and modern slavery may well be flawed from an analytical and political standpoint, but they also command a high degree of political currency and legitimacy. What would we stand to gain or lose in political and strategic terms if we started somewhere else? Perhaps attempting to discard trafficking and slavery is also politically risky? Does being 'on the outside' mean sacrificing at least some access and influence in favour of a more ambitious and ideologically 'pure' political vision, which ultimately has very little chance of actually being realised in practice?

These are not the kind of questions which can be answered once and for all, but instead require close and continual attention to potential trade-offs, opportunities, and complications. Not all anti-slavery or trafficking interventions look the same, and the kinds of strategic calculations which shape the behaviour of civil society campaigners may well be different to the calculations of officials working for governments or international organisations. Things may look different for lawyers than for social workers. Political constraints and opportunities found in one country are going to be different to those in other countries. There may be occasions when anti-trafficking or anti-slavery are strategically beneficial. There may be others where they are not. Context matters a great deal here.

That being said, it is not possible to entirely disentangle the local from the global. Campaigns against modern slavery and trafficking consume a

huge amount of energy and attention, and therefore have the effect of both displacing and distorting other kinds of political conversations. Being on 'the inside' may offer short-term gains which come at a longer-term cost. Many campaigners in many different fields have recognised that the levels of interest and investment associated with trafficking and slavery can be harnessed to help advance their own goals, but this in turn contributes to a widespread reluctance to bite the hand which feeds. Many insiders are aware that there are major problems with modern slavery and human trafficking in both theory and practice, yet they nonetheless remain reluctant to say too much about many of these problems in public, since this runs the risk undercutting their political platform. Major scandals frequently disappear without leaving a trace, such as the disastrous ['slave redemption' programme in Sudan](#) or the [fabrications of Somaly Mam](#). Shortcomings continue to be excused since the field is 'new', despite having been around for decades. If there continues to be little or no appetite for internal critique and public reflexivity then the same kinds of 'solutions' will be tried again and again, despite their now well-documented flaws and limitations.

This collection features a range of positions and perspectives regarding the tactical and strategic calculations associated with human trafficking and modern slavery. All of our contributors accept that there is room for further improvement when it comes to current practices. The key issue here is not whether or not things can be improved, but instead what improvement might look like. Some people want to build upon what we have by developing new strategies and models. Others want to tear things down and start somewhere else. Some favour a mix of both approaches. While everyone has a view regarding what *should* be done, the rubber really hits the road when it comes to identifying the strategies which are required in order to translate these goals into practice.

## INTERVIEW

# Why does Freedom United use the term ‘modern slavery’?

Joanna Ewart-James with Neil Howard

**Neil Howard (BTS):** What does your instinct tell you about whether or not we’re better off on the inside of the project to end ‘modern slavery’?

**Joanna Ewart-James (Freedom United):** The language you use and how you try to tackle the issue within that framing is, I argue, more important than whether you are trying to effect change from within an institution or not. I differentiate between actors who see modern slavery as an aberration to normal society, and the position I hold that it is actually for a large part a systemic problem. That it’s a result of a system where labour protections are weak, discrimination thrives, and where priority is often given to other matters like immigration policies, cheap prices, and fractured supply chains. In my view these causes make exploitation almost inevitable.

I’ve always talked about modern slavery. As much as it’s simply an umbrella term that doesn’t have a specific conceptual meaning, that puts me on the inside of the ‘modern slavery framing’. But inside that inside, I’m not part of the camp that says this is an aberration or crime that isn’t accepted. I say, ‘No, it is accepted. Of course it’s accepted. That’s why it happens so much, because we do tolerate it.’ That’s where my position is different.

I see the language of modern slavery as helpful because this is pretty shocking – the way that people are exploited really is serious. There are of course many forms of exploitation. It’s a continuum, and some forms are less severe than others. At the extreme end it’s particularly dark, and I think it should be recognised for that.

It’s important to realise that the things that need to change to address the most extreme forms would also address other forms of exploitation – those that don’t meet the criteria of what’s widely understood to be captured by the broad concept of modern slavery, like forced labour and bonded labour. They’re going to help. For example, there have been some really interesting developments lately around the 1930 Tariff Act in the United States. Under section 307 of this act US Customs and Border Protection should prohibit the import of goods produced through forced labour. It has increased its enforcement efforts in recent months. This ‘inside’ mechanism has the potential to turn expectations of what is acceptable – no forced labour – into a shift of better working conditions for those producing those goods.

Now, the Tariff Act is obviously a political mechanism. That’s the way it was first established, and perhaps the way it’s still used. But I do wonder how much the US government actually recognises its potential for changing a system in which forced labour is endemic. Does it realise just how many goods would have to be withheld at customs if it was going to properly enforce that provision? It really would be a lot.

**Neil:** So the strategic takeaways are that a) the term modern slavery can be used to mobilise people because of its extreme connotations; and b) the measures for tackling these extreme forms of abuse are likely to have positive knock-on effects for everyday exploitation – forms of abuse that aren’t quite as serious as what is called modern slavery but that are caused by the same systemic issues. Is that right?



**Joanna:** Yeah, that's right. I'd like to add that while not all forms of exploitation are extreme, a significant portion of systemic exploitation actually does fit the bill. More recent pieces of legislation, like the International Labor Organization's Forced Labor Protocol, pick up on that. Now, this is a tool from 'the inside' – it's part of the core standards providing fundamental rights – but the language in it clearly points to a problem in the current system. Article 2 (d) makes clear the need to protect migrant workers from abusive and fraudulent practices during recruitment. It may not use the term modern slavery but in talking about the role of recruiters, it points to changes needed in the 'main system'.

I completely concede that there is a real lack of attention in the inside world regarding the systemic nature of forced labour. A lot of topics we pick up at Freedom United aren't seen as systemic or as trafficking issues by others in this space. A key one would be forced prison labour in the US. We have been actively campaigning on this, targeting the corporations contracted to detain people, seeking divestment, and even pushing for modification of the constitution, which currently allows slavery as a punishment for crime under the thirteenth amendment. And I think that making it clear that these examples are actually modern slavery, for want of a better word, wakes people up to the degree of exploitation, how linked into the system it is, and the seriousness of the problem that we're facing.

**Neil:** So you're saying that the terminology of modern slavery has such gravity that there's almost a political shock value attached to using it. The standard comeback to that position, made by critical academics as well as others, is that by defining modern slavery as the worst of the worst and then focusing in on that, you implicitly normalise less severe, everyday forms of exploitation. How do you respond to that?

**Joanna:** I'd begin by reiterating that ending the most extreme forms will inevitably tackle the more everyday forms. There are lots of different examples around domestic abuse or women's rights, for example, where successfully tackling the most ex-

treme form has had knock-on effects on the more everyday forms.

Starting with the most extreme forms is also a way of building recognition. Society at large doesn't yet accept that these conditions are unacceptable. In other words society right now tolerates the extreme exploitation of other people. And at worst, that looks like modern slavery. Given that status quo, how do you bring about the shift in social values that you would need to address everyday forms of exploitation if you don't even challenge the most extreme forms of exploitation that constitute modern slavery?

So we have a job to do. We need to open eyes to what this exploitation is that we're talking about, and get society to say, 'Actually no. That's not on. I'm calling that out.' I think it's too easy to dismiss if you just talk about everyday exploitation. People will say, 'Oh, well, they're migrants. They just want to work all the time and it's better for them here than it is at home. At least they've got a job.' That's the narrative that we hear all too often from the naysayers. It's a really hard problem – how do we galvanise society and shift society's values so that we are more intolerant of the whole range of exploitation?

I don't think it should be about using shock and horror for the sake of it. It's about tuning into what we have already agreed is not acceptable. If you go out and do a poll, you'll find that people agree that slavery is not acceptable. There's not a debate about that. So by using that language, we're already a step ahead in ending this egregious exploitation. Now, the problem that we've had, especially in the UK prior to 2014, has been to get people to acknowledge that it's relevant to us today. People have said, 'Yes, slavery is not acceptable,' but they've also said 'it's history'. There was no connection between this value of slavery being not acceptable and the conditions under which people are exploited today. But we're starting to see a change.

So I'm not saying that we should use the term modern slavery because it has shock value or because being sensationalist helps us. I am very much

against sensationalising anything in this topic, as in fact I find it very unhelpful. That's not the reasoning. My reasoning is to get people to recognise that what they're seeing doesn't align with their values. That's a job to do. And I just think we've already partway there when we use the term modern slavery, because people know that's not acceptable – they just don't see what's happening.

Neil: So it's about rhetorically framing the issue as something that is clearly beyond the realm of what is acceptable – in doing so, you hope to get people to realise that so much of what we don't actually accept is happening on an ordinary basis?

Joanna: Exactly. The UK is a great example for this as we've seen such a shift over the last decade. People now report instances of everyday exploitation. Take car washes. A few years ago nobody really took notice of the working conditions at car washes, or thought they were something to worry about. Now they say, 'Oh, this thing, I know that isn't right, slavery, oh my God, it's happening here.' And that's not all. The thought continues with, 'I want to do something about it.' That's my reason for using the language of modern slavery.

Neil: I certainly see the rhetorical power of the term, and I can certainly see the argument for using it as you have suggested here. At the same time, I'm still concerned that the extreme nature of the term modern slavery serves to make lesser forms of exploitation appear normal and a bit, well, 'meh'. I'm worried people will say, 'what's happening over there isn't an issue because it's not modern slavery'.

Joanna: I think part of the problem is the fact that the messaging used by those on the inside doesn't always support my proposal, or if you like my theory of change. A lot of the messaging that uses the term does what you're describing – it normalises everyday exploitation while sensationalising the extreme forms. That's not helpful. It's part of the problem. If it isn't presented in the way that I'm describing – as a wider endemic problem – then of course it just makes you question the whole approach.

Neil: I appreciate that caveat. Modern slavery is also a term that seems to unite people across the political spectrum. There are folks taking a structural and more radical stance like you, but you've also got boardrooms, Tory politicians, billionaire philanthrocapitalists – people who typically are not aligned with any sort of progressive economic reform agenda. What does it say to you as someone who critically uses this term that so many pillars of the establishment also use it?

Joanna: Let's go back to my example of the US Tariff Act, because I do genuinely wonder whether there's any thought or conversation at the administrative level about the broader economic implications of implementing it properly. Withholding the goods is one thing, not insignificant, but are they actually going to try to get real evidence of what's going on? Politics aside, this mechanism has the potential to lead to structural change, but whether it actually does of course remains to be seen.

I think, again, the UK is a great example here. Theresa May, the previous prime minister, really hung her hat on tackling this issue whilst at the same time implementing a number of policies that actually perpetuated it. It really undermined the whole agenda because, on the one hand, the UK was politically trying to cast itself as a leader in tackling modern slavery, while on the other hand essentially pushing people into modern slavery through its incredibly restrictive and discriminatory immigration systems in particular.

I don't know if it's unique to modern slavery, but the concept certainly does have political attraction and at times the people using it are serving their own interests.

Neil: That's the thing. In my analysis, when people like Theresa May or Donald Trump vociferously say 'I'm against modern slavery' or 'I'm against trafficking', what they're doing is trying to position themselves as morally good. And so one of the things that worries me about this powerful terminology is that it provides a type of cover for politicians pre-

siding over structures of discrimination and exclusion. By associating themselves with modern slavery or with trafficking, it allows them to claim that they're good and they're moral and that they stand with the downtrodden. As someone who uses this terminology and who engages with them, how do you respond to that?

**Joanna:** I wouldn't challenge what you just presented. I think it's real. It's also true for a lot of things. You could say the same thing about corporate responsibility more broadly. I have big question marks myself around the ability for big business to reverse engineer to be ethical operators. But I think we can say that there have been some improvements despite, perhaps, the political conflicts around the whole modern slavery agenda. The examples I gave around the general public and the

I think there are opportunities to leverage change in that in a small way – for example making sure that asylum seekers have a right to work. That's a really mini version of challenging the restrictions on people who come into the country. I don't know what a campaign would look like that just said, 'Let's open our borders.'

That said, for more than fifteen years I've been involved with an organisation called Global Justice Now. When they first started talking about open borders my first thought was, 'Ooh, how's that going to work?' Historically they've worked successfully on structural issues around trade justice. But it's been really interesting to see how they've created space around the concept of open borders. I've been surprised that there has been the political space to do that. So I think it's possible, but the way that Freedom United is structured as an institution

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## “How do you shift a whole world?”

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UK being much more cognisant of the way that extreme exploitation manifests itself today is really a result. And I think you can't deny that it's a result of the fact that we have had some very big names and very high-profile attention given to the language. I don't think it would have happened without that language.

**Neil:** OK, but given your structural framing of this issue as well as your general politics, why don't you go for broke and say, 'borders are the issue,' or 'capitalism is the issue'?

**Joanna:** Interesting question. I guess right now I don't see a specific opportunity to mobilise around. I am not against having a campaign around it. But I think the real challenge is, what chance is there to leverage change that is as big as that?

means that we have to work within the structures that we have.

The other example you gave me was capitalism. Again, it's a really, really big topic. How do you shift a whole world? You can try, but you'd definitely be on the outside and it's hard to see how you could actually make progress. It's not that we don't see the problems, but we are trying to get some small improvements quickly enough that they will actually change lives right now.

**Neil:** So having a concrete leverage point with a concrete potential win is really important, as while 'big change' might be desirable it's difficult to conceive of how you would organise to achieve it?

**Joanna:** That's a fair recap. And I'd stress that you can get notable improvements from those small



changes now, even if you're doing them within the confines of a system that isn't really in favour of what you're trying to achieve.

There's a slight chance that could be changing. Looking at global politics and trying to be optimistic about it, which I almost never am, I'd say that thanks to Trump and the growth of nationalism there is definitely now more space for radical conversations than there was. That's a great thing. We're seeing it in different ways, and if we can hook it to this framing of slavery that is supposedly internationally recognised as a human rights violation, then happy days.

Discrimination, which we haven't talked about at all, is another one of those really clear systemic issues that is tightly connected to tolerance of exploitation.

It's interesting to see how that's been handled by 'the inside'. Discrimination is recognised as an underlying factor in exploitation, including extreme forms of exploitation that could be termed modern slavery. But it's not being addressed systematically. We've talked about it quite a bit at Freedom United in our posts and in our content. But, returning to the point I made at the beginning, it's more regularly framed as an aberration from a norm by others in the modern slavery space than as a systemic problem.

Neil: In my own research, I've found that many people who have been labelled by policy-making institutions or by the state as 'victims of trafficking' or as 'victims of forced labour' reject these terms. They experience these terms as somewhat dehumanising. They understand themselves as having chosen to do what they are doing because it was the best choice from among the available options, or because they saw it as a pathway to something better. What do you make of that? How does the rejection of the terms by the people labelled with them impact your thinking around using them?

Joanna: Good question. I think that this was a much more common position in the past than it is now. I remember being in a round table group of about

twenty odd organisations that were working in this space about a decade ago. We were discussing the term modern slavery, and in particular we were asking what the people who have experienced it feel comfortable with and what they don't feel comfortable with. At the time there were only two people in the room that felt comfortable with the term modern slavery, partly because of the exact reason you mentioned. There's still a stigma attached to it and it's not always something people want to be associated with, but I think it's changing.

It once again all goes back to framing. There's a real tendency in the sector to be very victimy towards those who are suffering. One of the things that I've talked and written about consistently is that it's a bizarre sector in its lack of lived experience within it. You can't imagine a gay rights movement with so few gay people working in it, or a disabled rights movement with everybody able bodied. But that's close to what you've got in the anti-slavery sector. It's really odd, and I think that is why you've got this failure to recognise how and when you use the language in a way that's appropriate.

So we have to be able to back up our language use and be able to justify why we use the terms we do. But that doesn't mean you can't use the modern slavery label in a way that is respectful and empowering for people who have lived experience. Making sure you do so is really important.

I completely get why many people reject the label. As an analogy, think about when you fall victim to a scam – you just feel like an idiot. 'Oh, I can't believe that happened to me.' It's a bad outcome, but it's simply something that happened to you. Or, as you say, some people have little choice but to accept bad working conditions. They go into it knowingly and hope something half decent might come out of it. It's at this point that you get into one of the massive questions in the sector: where is choice real in any given context?

Could you really choose to get into an unventilated container on the back of a lorry in Belgium to

cross the sea? Were you just really stupid about it? Or did you just think, 'I can't get a visa and so many other people have done this journey successfully, the driver says there's no other way and that he will keep the ventilation going, so I just have to take that chance.' Obviously, your whole judgement changes very dramatically according to what circumstances you're in at that moment.

At the end of the day, I think you can say that even though Freedom United uses the language of trafficking and modern slavery – a language that many people are uncomfortable with – we can still talk about survivors' experiences and let their views and opinions form how we present their stories and narratives. This is why we've really pushed hard on our 'My story, My Dignity' campaign, which is all about representation and presentation. And I think it's super important that we're always reviewing how can we be better allies in the sector, because that's what we are.

*Neil: It's heartening to hear this kind of critical self-awareness, especially because in my experience it's not all that common in this sector. So if the goal is to help and improve as allies, what needs to change in the field to make that possible?*

*Joanna:* First, we need to create a space where people who have experience, who can very well articulate what needs to change, feel welcome. Second, we need to ensure that they have opportunities to be a part of the movement. And third, the opportunities need to exist for them to lead the movement. It's mad that it's so rare at the moment.

There are many different things that we can do to make that happen. A really simple thing is asking yourself how you communicate about the topic. How do you talk about it? How are you conveying

people's stories – how do you represent them and their experience? At Freedom United, we have people with experience leading our campaigns. They communicate in their voice to our supporters.

For example, we recently sent out [a story](#) that was written by a man named Raymundo, who was trafficked from Central America to California to work under coercion on a farm. Thankfully he's now in decent farm work and so in a position to call for change in law so that there's more control over foreign labour contractors – so they're all licenced and regulated. We sent this message out in his words, under his name, in both Spanish and English. Another of our campaigns, on ending forced child marriage in the UK, is fronted by Payzee Mahmod – a woman who, along with her sister Banaz, was forced into marriage by their father at sixteen and seventeen years old. Payzee has been campaigning for change and so the obvious person to speak to Freedom United supporters.

When people with lived experience front campaigns then it leads to better communications. If you've got no perspectives from people who've experienced it, I'm not surprised then that you're not creating appropriate content or that you're not working in a way that creates space for them to be part of what you're doing. And these are really simple things that can be done right now.

The lack of their voices, of their presence, of their leadership is such a systemic issue. It's not surprising, because many survivors are too busy trying to navigate often complex and restrictive immigration systems, and access the support they need to recover, basically survive the day to day. Not all, of course, but many. They face discrimination in so many ways, and it makes it very difficult for them to have the opportunity to lead in this space.

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*This interview has been edited and condensed for clarity.*

# Anti-trafficking is an inside job

Nandita Sharma

Anti-trafficking has always been an ‘inside job’. This is true in at least two ways. First, we have an alliance between anti-trafficking organisations and state officials, who have worked together to embed the anti-trafficking framework into both international agreements and national and local laws. This alliance has actively dismissed the concerns of feminists, including sex workers, who have spoken up about the harms that tend to occur whenever anybody gets it in their head to ‘save women and children’. It has also sidelined evidence that anti-trafficking measures tend to intensify the harms already being done by immigration and anti-sex work policies.

Secondly, we have organisations who have used anti-trafficking and the access and influence it enables to advance other aspects of their agenda. Groups seeking to abolish sex work are the prime culprits here. Abolitionist campaigners have successfully harnessed sympathy for trafficking victims to further criminalise sex work, harass sex workers and their clients, and deny safe and law-bound routes of intra- and international migration for sex workers. Under the guise of anti-trafficking, in many jurisdictions previous victories gained by sex workers have been rolled back and sex workers have become more exposed to the punitive power of the state.

## Follow the anti-trafficking money

Anti-trafficking crusaders have furthermore enriched themselves by being on the inside. They have financially benefitted from the funds civil society organisations and government agencies give out to ‘combat trafficking’, and acquired social capital by establishing lifelong connections and networks with the powerful and wealthy. As [Cynthia Enloe has demonstrated](#), protecting women and children has long been a powerful tool for soliciting sympathy,

money, and weapons. And anti-trafficking is indeed a well-oiled machine: the Trump administration alone has authorised approximately \$430 million to “fight sex and labor trafficking” [since 2016](#).

This is a mutually beneficial alliance. The flow of hundreds of millions of dollars in the United States to organisations fighting ‘modern-day slavery’ has played a major role in drawing attention away from government policies on immigration, free trade, employment, the environment, and public welfare. Talking about ‘traffickers’ and ‘smugglers’ is not only an effective way of closing down other conversations, it also enables nation-states who would otherwise be defined by their anti-migrant, anti-environment, anti-women, anti-worker, and anti-poor policies to be viewed as the saviours and protectors of ‘victims of trafficking’.

This is no small benefit to nation-states. Look again at the Trump administration’s support and funding for anti-trafficking measures, which has been a hallmark of this administration. Since taking office, Trump has had a full-time appointee overseeing anti-trafficking initiatives and signed three executive orders and eight bills expressly targeting human trafficking. Trump has presented this as [“fighting for the voiceless”](#).

Yet “the voiceless” to which Trump refers clearly does not include anyone affected by Trump’s immigration policies, including those harmed by the effective ending of lawful routes of migration to the United States, the implementation of a ‘Muslim ban’ (which reintroduces racism into US immigration law), the interdiction of asylum seekers at the US’s southern border, and the organised abandonment of would-be refugees in hazardous, make-shift



camps in Mexico. Most egregiously, Trump's concern for the most vulnerable does not extend to the separation of children from their caregiving adults as part of his administration's "zero tolerance" policy – an especially vicious tactic to try and thwart future migration to the United States.

The voices of the people harmed by Trump's anti-immigrant policies have not been prioritised by anti-trafficking activists either. It is no accident that most anti-trafficking organisations have failed to speak out against each and every one of Trump's anti-immigration policies. On the contrary, many have stood beside Trump and his daughter Ivanka and applauded their anti-trafficking initiatives. Marking one such occasion, the twentieth anniversary of the 2000 Trafficking Victims Protection Act on 31 January 2020, Trump [commented](#) that his

"bilateral cooperation agreement on security and migration" with El Salvador, as well as others signed with Honduras, and Guatemala. These agreements ensure that anyone seeking refuge in the US who has traversed these refugee producing states would no longer have the right to do so.

The strategic appeal of 'combatting trafficking' goes well beyond the United States. El Salvador's foreign minister, Alexandra Hill, justified their participation in the bilateral agreement by invoking the recent deaths of a father and daughter from El Salvador who drowned in June 2019 in the Rio Grande. Claiming that their deaths "hit El Salvador in the heart", Hill said the agreement would help El Salvador "avoid" such deaths. Yet this humanitarian rhetoric provides political cover for El Salvador's endorsement of Trump's efforts to further close

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"Talking about 'traffickers' and 'smugglers' enables nation-states who would otherwise be defined as anti-migrant to be viewed as the saviours and protectors of 'victims of trafficking'."

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policies were a response to a "level of evil that you would never believe is even possible in a modern age. The level of evil is incredible." The evil he was referring to was definitely not his administration's continuing failure to reunite over 600 hundred children whom they separated from their parents.

#### **Anti-trafficking or anti-immigrant?**

There is further evidence of this symbiotic relationship between the anti-trafficking and anti-immigrant agendas. Notably, recent policies aimed at virtually eliminating asylum in the US have been reframed as humanitarian measures to "[reduce illegal trafficking and human trafficking, as well as forced migration](#)". This is how Trump described his 2019 signing of a

routes of migration to the US, thereby increasing the danger to those who try.

This provides a clear-eyed glimpse into what anti-trafficking means to nation-states: legitimising anti-immigrant policies. The diversion of refugees from the US to El Salvador (or Guatemala or Honduras) is justified by invoking 'evil traffickers', yet they are merely a prop held up to distract attention away from the US's increasingly severe policies on immigration. Self-interested efforts to prevent movement are transformed into a shared humanitarian project to 'combat trafficking'. Again, money greases the wheel: while it currently remains unclear what El Salvador or Honduras will receive

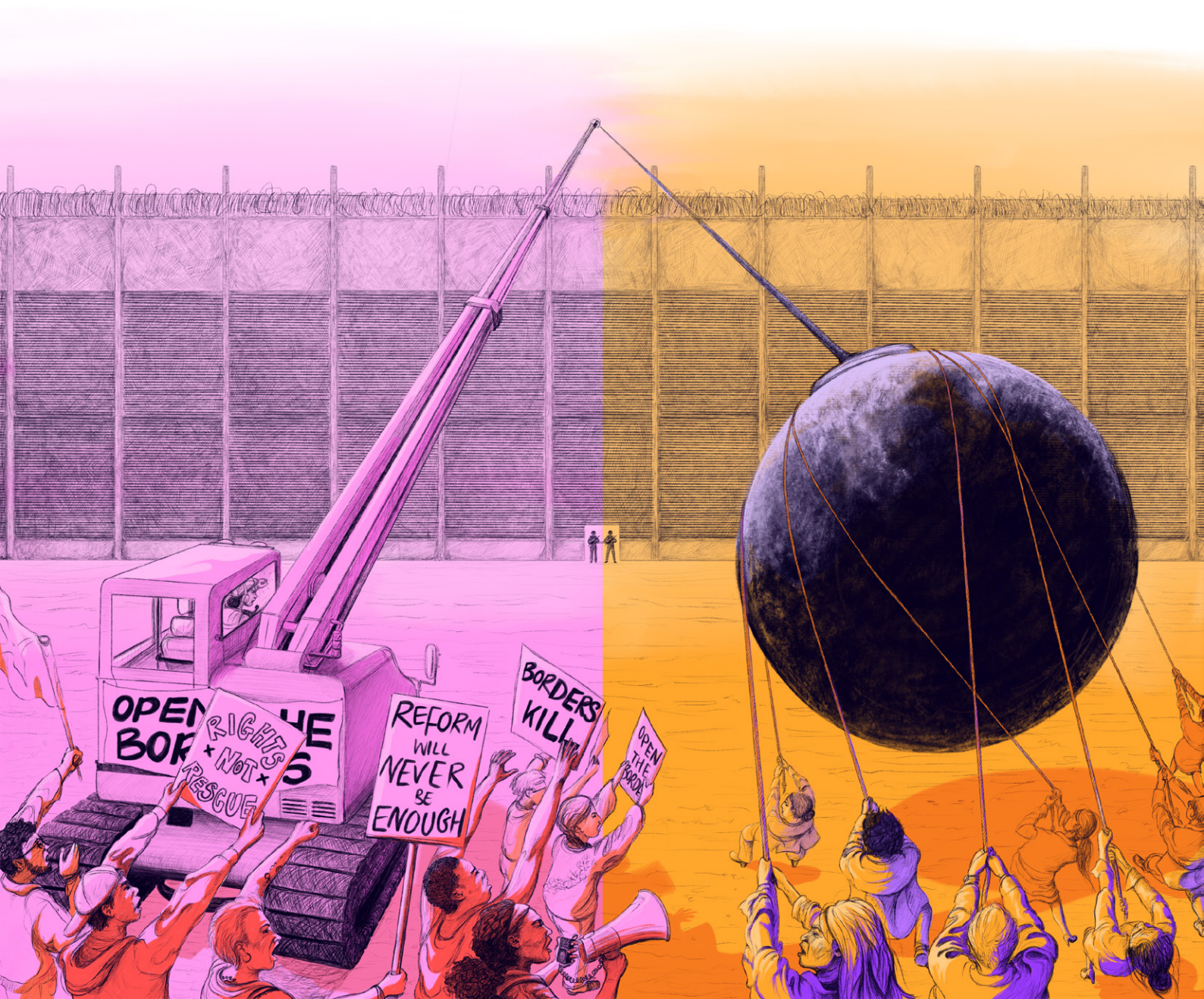
from the US to ensure that refugees are unable to claim asylum there, the Trump administration has agreed to transfer **\$40 million** to the United Nations refugee agency to effectively warehouse migrants in Guatemala, including those deported from the US.

This brings into focus a key question: how would the intensifying labyrinth of immigration restrictions be perceived in the absence of anti-trafficking measures? Would ever more draconian immigration laws be as easy to justify or to enforce if they could not be sanitised as humanitarian efforts to 'protect migrants'? My answer – drawing upon [my](#)

[own research](#) into how anti-trafficking rhetoric has led to unauthorised migration becoming more dangerous and more expensive – is no. The wide dissemination of the fear of traffickers has been integral to efforts to harm migrants.

### Anti-trafficking conspiracies

By presenting themselves as 'saviours', anti-traffickers have secured prestige and authority within societies which have become obsessed with the trafficking of women and children. It should come as no surprise that this is an obsession which they have played no small part in fomenting. Even far-right conspiracy





theories have by this point jumped on the anti-trafficking bandwagon as a way of re-presenting themselves as rescuers of victims and not victimisers.

This has most recently manifested in the social media phenomenon of QAnon, which draws upon long-standing fears about a vast network of traffickers who conspire to harm women and children. The QAnon slogan, “[save the children](#)”, borrows directly from the rhetoric accompanying efforts to ‘combat trafficking’. Indeed, the use of this slogan has increased the popularity of QAnon – and, unsurprisingly, the popularity of Trump. QAnon adherents believe the current president is secretly fighting a network of liberal Hollywood celebrities and Democrats supposedly running a child trafficking ring. President Trump’s tacit support of QAnon aligns with his own anti-trafficking agenda. Both incorrectly portray Trump as the protector of women and children.

Some 150 anti-trafficking organisations recently denounced QAnon in an [open letter](#), which stated that it misrepresents the extent of the phenomenon of trafficking as well as its root causes. The letter maintains that “we need policies that address systemic vulnerabilities of children to both sex trafficking and forced labor,” yet it once again remains silent when it comes to Trump’s own misrepresentation and strategic manipulation of the concept of trafficking. It is clear that the women and children these organisations purport to care for have been

adversely affected by Trump’s policies, yet they find ways to look the other way.

There is an alternative path available to anti-trafficking organisations if they want to take it. If people seriously want to protect women and children then they should spend their energies trying to reform national immigration policies to make them less restrictive, less punitive, and less about deporting or caging people. Instead of giving lip-service to the systemic vulnerabilities of ‘victims of trafficking’, they would put their combined weight into exposing and challenging the very logics of nationalism and global capitalism that prevent most people from safely moving between nationalised territories. While this path is available to such organisations in theory, it is unlikely to be taken in practice. Walking it would mean upending the mutually beneficial alliance between anti-trafficking organisations and the nation-state, and thereby complicating all of the access, financial gain, and influence it generates.

It is well past time to jettison the entire framework of anti-trafficking by recognising that national border controls are meant to deny people their freedom. Border controls are designed to harm and are dedicated to destroying planetary solidarity. Anti-trafficking crusaders are part of the problem and play no part in the solution.

# Are our laws cut out for addressing systemic exploitation?

Maria Grazia Giammarinaro

## Shortcomings of the implementation of the 2000 Palermo Protocol

Since the late 1990s I have been committed to establishing, implementing, and monitoring anti-trafficking legislation and policies. This includes a six-year tenure as United Nations Special Rapporteur on trafficking in persons especially women and children, which ended in July 2020. As many people will already be aware, the prevention of and fight against human trafficking has also been closely linked with the struggle against slavery. When the 2000 Palermo Protocol on trafficking was negotiated it was motivated by a desire to define and address trafficking as a modern form of slavery.

After twenty years of visiting, monitoring, and learning about experiences in many countries, I have serious concerns about the effectiveness of anti-trafficking legislation and policies, and about the degree to which they align with a human rights-based approach. To my mind, the key issues are:

1. Human trafficking and slavery tend to be interpreted on restrictive terms, and the number of criminal proceedings for both trafficking and slavery remains very low world-wide. The consequence has been not only widespread impunity but also the denial of victims' rights.
2. Prevention is not really addressed, or is limited to awareness raising campaigns. These are not always useful, since many neither address the right audience nor send the right message.
3. The gendered dimension of trafficking, and the role of patriarchal structures in the production of women's vulnerabilities, are usually not understood.
4. Trafficking for labour exploitation is only rarely addressed within established law enforcement anti-trafficking paradigms.
5. Victim identification rates remain very low worldwide. States have failed to identify trafficked persons among mixed migration flows, and governmental support measures for trafficking victims are often limited to short-term assistance and do not ensure full social inclusion of survivors.
6. While civil society-led activities are generally inspired by a human rights-based approach, government-led anti-trafficking actions have contributed to further violations of victims' rights. For example, multiple governments have established so-called 'closed shelters', where victims are supposed to be protected but are actually subjected to administrative detention.
7. Finally, and importantly, remedies are very rarely awarded to victims of trafficking or slavery. As a result, the promise of a human rights-based approach ends up being nullified, since the right to receive compensation as an outcome of criminal or other judicial proceedings is rarely realised in practice. This is one of a number of reasons why victims are not encouraged to come forward and report exploitation.

Law enforcement led anti-trafficking and anti-slavery actions are mostly failing. The full involvement of the business community, trade unions, and civil society is needed to tackle labour exploitation, especially through effective actions aimed at empowering workers, promoting respect of their rights, and cleaning supply chains. Some governments and



affluent private sponsors have helped to mobilise important energies within the business community, but problems remain when it comes to the ineffectiveness of voluntary initiatives adopted by the private sector. For example, prominent anti-slavery and transparency laws impose only reporting obligations on businesses. They should instead compel businesses to take action to eradicate exploitation from their supply chains. There is also the risk that focusing upon slavery means concentrating upon the worst cases of exploitation, with the consequence that extensive exploitation – which is endemic in supply chains – goes unnoticed.

### Political tactics and strategic planning

This debate asks whether we can more effectively improve workers' lives from inside the anti-traffick-

for a considerable number of individuals. From a human rights point of view, every person gaining freedom and autonomy makes a difference.

However, from a strategic point of view, the human rights community needs to invest in a new global human rights instrument and innovative national legislation focusing on a broader notion of exploitation. In this direction, three topics should be prioritised:

**Prevention** as a strategic approach to labour exploitation. This implies effective action by governments and businesses based on a mix of voluntary schemes and binding provisions. Such provisions would impose specific obligations on parent companies to identify risks in their supply chains, establish plans to address them, and put in place viable

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“From a human rights point of view, every person gaining freedom and autonomy makes a difference.”

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ing and modern slavery system or from outside of it. I would say that the human rights community should be simultaneously IN *and* OUT. We should be IN as a matter of political tactics, and OUT as a matter of strategic thinking.

From the point of view of political tactics, the human rights community should continue to use all the existing tools at its disposal to re-orient implementation of anti-trafficking and anti-slavery legislation and policies according to a human rights-based approach, and to promote more effective victim support.

The results of anti-trafficking actions are modest globally, especially when placed alongside the estimated global dimensions of trafficking and slavery. However, existing interventions have worked out

solutions for workers losing their jobs when severe exploitation is identified. National legislation should furthermore establish corporate liability for parent companies not complying with such obligations, as well as tackle recruitment and intermediation practices while also strengthening labour inspections. In all of this a clear firewall between labour checks and immigration controls must be maintained at all times.

**Effective remedies** for exploited persons. The entire range of remedies for human rights violations must be made available, including restitution, restoration, compensation, rehabilitation, satisfaction, and guarantee of non-repetition. Such remedy should not hinge solely on the outcome of criminal proceedings, but could also come through judicial and non-judicial complaint mechanisms as

well. Importantly, such remedies include not only financial redress but also regularisation of migration status, family reunification, and restoration of employment. Access to remedies is a right of any exploited person, as well as a powerful means to ensure their empowerment and full social inclusion.

**Early support** to exploited persons or people at risk of exploitation, especially among the migrant population. This will not only prevent their further exploitation and promote their social inclusion, but it will also allow them to access help irrespective of their formal identification as victims of crime. Civil society organisations should be funded to provide counselling, healthcare, and other necessary assistance measures for such vulnerable persons.

In conclusion, the ‘IN *and* OUT’ option requires the ability to achieve concrete results on the basis of existing regulations and mechanisms, while at the same time being aware of their flaws and actively promoting new approaches.

Following Bell Hooks and her feminist theory, I would choose the ‘margin’ as a space of radical criticism and openness to new ideas. From the margin we can be IN and OUT, taking every opportunity to improve victim support and simultaneously developing new strategic plans.

I’m convinced that the daily struggle for the respect of victims’ rights can be more successful if it is carried out with a clear perspective of a strategic shift from the trafficking and slavery standards to the notion of systemic exploitation. Such a shift requires an exceptional commitment by the whole human rights community to elaborate on the idea of a new global instrument addressing exploitation, to identify its scope, purposes, and contents, and to promote a substantive discussion at international, regional, and national level.

# The Palermo Protocols at 20: a missed opportunity for ending trafficking

Mike Dottridge

Two decades after the United Nations adopted a protocol against human trafficking (the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime), enough time has passed to comment on the most salient aspects of what has gone right and what has gone wrong.

During these decades the international community could have made great strides towards ending the types of exploitation included in the protocol as human trafficking, namely “the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

However, the balance sheet after twenty years shows something else. This is in part because the protocol was linked to a convention against organised crime as well as a second protocol aimed at penalising ‘people smugglers’ for helping migrants to cross borders illicitly. Most measures taken since 2000 have focused on strengthening law enforcement agencies and prosecuting criminals. They have not addressed the causes of exploitation or sought to reduce its occurrence. The smuggling protocol furthermore made it harder to distinguish the benevolent brokers helping irregular migrants to cross borders from the sharks preying on migrants, while legitimising government attempts to equate the two. As a result, the past two decades have seen the world’s wealthy countries institute a range of hostile measures to prevent refugees and irregular migrants from entering their territories.

The trafficking protocol focuses on what is supposedly a quite different form of abuse: the recruitment (which sometimes involves crossing borders) of people (women and girls, but also men and boys) “for the purpose of exploitation”. It has resulted in countless law reforms and tens of thousands of police being trained to identify and investigate the crime of trafficking. This has led to an increase in prosecutions and convictions of traffickers. However, the structural causes of exploitation remain unaddressed: the vast inequalities in income and power within and between countries, the systematic discrimination practiced throughout the world against migrant workers, and a continuing trend to abandon conventional employment relationships and regulation of the labour market.

## A fig leaf for repression

In practice, many of the actions taken in the name of stopping trafficking have had the effect of harming migrants and people who have been trafficked. Measures against irregular migrants have been repeatedly justified by politicians as ‘rescuing’ trafficking victims. Rich country governments have exploited the issue of trafficking (and the related one of ‘modern slavery’) to advance their own interests at the expense of the very people they claim to be protecting. Several countries have used their anti-trafficking or anti-slavery agendas like a fig leaf, while simultaneously implementing repressive policies that violate human rights. The USA embarked on an anti-trafficking crusade while putting its version of Hitler’s ‘Nacht und Nebel’ order into action, creating terror through disappearances and torture in the aftermath of the September 2001 attacks on New York and Washington DC. The United Kingdom started



focusing on ‘modern slavery’ after its government made it a priority to create a ‘hostile environment’ for migrants and to deport as many as possible.

Countless governments have been selective about which types of exploitation they want their criminal justice system to target. Before the provisions of the trafficking protocol had even been finalised, it was clear that the USA, Sweden, and various other countries wanted to use it to stop prostitution in general (claiming that all or most sex workers were trafficked). Predictably, sex workers who have not been trafficked have protested that anti-trafficking measures seek to deprive them of an income or to push them into more hazardous working conditions. The two decades since 2000 have not resolved the differences in approach between the anti-prostitution crusaders and others.

The preoccupation with commercial sex has been less dominant since 2010. The International Labour Organization adopted a convention about domestic workers in 2011 and a protocol on forced labour in 2014 (supplementing its original 1930 Convention on Forced Labour). In theory this should have resulted in more action to protect migrant workers who were forced to work, whether in private homes, workshops, fields or at sea. Yet implementation has been once again influenced by the priorities and inclinations of governments. Big business has also been more concerned with the steps they are supposed to take under the UN’s Guiding Principles on Business and Human Rights (2011), which have been side-tracked to a worrying extent by the requirement to publicly state what is being done to ensure that suppliers do not exploit workers. So far these statements, which can be crafted to sound marvellous, have divulged little about what is happening in practice.

### Lessons not learned

Many hundreds of millions of dollars and euros collected from taxpayers in industrialised countries have paid for projects around the world to ‘stop trafficking’ or ‘stop modern slavery’. However, instead of building on knowledge and experience,

these have repeatedly reinvented the wheel. Instead of choosing the most effective implementing partners and the methods most likely to succeed, many governments have preferred to channel funds to organisations with an ideology of which they approve. Hundreds of millions of dollars have been channelled to avowedly Christian organisations, in effect subordinating the anti-trafficking and anti-slavery agendas to that of Christian churches.

Projects also suffer from the way in which they are handed out. They often go to the cheapest bidder rather than to groups with real expertise, and the inexperienced staff of the former frequently do not apply or are simply unaware of previous lessons learned. Sometimes no lessons are learnt at all. The lifespans of individual projects are generally short and they rarely achieve their objectives. As a result, after two decades it is still common to see comments such as “we haven’t had time to learn what works”.

Patronage for anti-trafficking programmes has also been a tool in the ‘divide and rule’ approach that powerful governments have taken to the United Nations system, in which different UN organisations are pitted against each other rather than pushed to cooperatively identify best practice. Indeed, the very phrase ‘best practice’ has been subverted to add gloss to the many anti-trafficking methods used by different organisations – there is no international forum that agrees on these things.

Private sector donors have also made large amounts of money available for anti-trafficking work. Some quietly and effectively support local initiatives away from the limelight. Others seem to think that dominating the headlines should be given priority. Their publicity focuses mainly on numbers (of ‘modern slaves’ or ‘trafficking victims’). One was established in 2013 with a commitment to reduce the number of people in modern slavery, but instead revised its way of counting who this involves and consequently doubled the number involved. The numbers game has been a good way of grabbing headlines, but not an effective way of protecting people.

Is it reasonable to conclude that powerful governments (and private donors) have used the past two decades to 'play' with the issues of human trafficking and modern slavery, rather than to devote energy and resources to stopping the worst forms of exploitation? This sounds very unfair on the police, health workers, social workers and non-governmental organisations that have worked to catch

criminals and protect victims. Nevertheless, my conclusion is that politicians and decision-makers at the top have acted as saboteurs. A quite different agenda is needed to protect migrants and other job-seekers from poor communities, and to challenge both the discrimination and oppression that characterise today's global economy.



## Missed opportunities and exclusion: sex workers reflect on two decades of anti-trafficking

### International Committee On The Rights Of Sex Workers In Europe

For anyone interested in the rights of sex workers, the twentieth anniversary of the Palermo Protocol is an unmissable chance to evaluate how sex workers have been impacted by anti-trafficking rhetoric and policy. Whatever opportunities Palermo might have initially presented, it is now inextricably aligned with harmful ideological agendas that sex workers are obliged to resist and reject.

For decades now, sex workers in Europe have been combatting calls to 'abolish prostitution'. These have gained prominence via the conflation of trafficking and sex work. Researchers have repeatedly demonstrated that this conflation is flawed, yet it continues to be championed by opponents of the 'sex work is work' approach.

At the heart of this dispute is the so-called Swedish Model. Born one year before the Palermo Protocol, this policy criminalises the clients of sex workers in order to end demand for sex work and, its proponents would believe, for trafficked women. Despite its many flaws, this model has now been adopted in Norway, Ireland, France, Northern Ireland, Israel, and Canada. Other countries are currently debating whether to adopt it as well. Meanwhile, both the protocol's and the Swedish Model's overwhelming focus on criminal justice has channelled immense resources into the investigation and prosecution of traffickers, as well as into programmes designed to prohibit prostitution in all but name.

#### Criminalisation that harms

Despite political rhetoric framing anti-trafficking work as grounded in human rights, punitive approaches remain dominant. To a large extent, an-

ti-trafficking has come to mean the criminalisation of users of services and goods produced by victims. Thanks to the blanket conflation of sex work and trafficking, combating trafficking for sexual exploitation has thus translated into criminalising the users (clients) of *all* sex workers.

The vulnerabilities brought on by the criminalisation of demand have been exacerbated by the criminalisation of facilitating sex work. This is often assumed to be a provision against abusive pimps, but under repressive prostitution and anti-trafficking regimes it goes much further. Any third-party facilitation of prostitution risks arrest and prosecution, and no distinction is drawn between abusive employers and groups of sex workers working together for safety. Thanks to laws such as [FOSTA/SESTA](#) in the United States, third party criminalisation has extended into the digital realm, with websites, applications, and online advertising platforms being shut down for facilitating prostitution and/or trafficking.

Much of this opposition to sex work has come from conservatives, who continue to understand sex in terms of purity and male control over women. However, the most visible champions of the conflation of sex work and trafficking have been radical feminists. Sometimes also described as 'carceral feminists', these individuals have made the criminalisation of the purchase of sex their central demand and rallying cry despite the harmful effects it brings to sex working communities.

To help make their case, these radical feminists have amplified the voices of some survivors of human trafficking. But they are highly selective. They



don't want to hear from survivors who demand a rights-based approach to migration and the decriminalisation of sex work. Individual stories of victims and villains must instead take centre stage, while politicians, activists, and the general public are allowed to play the self-gratifying role of saviours. Much less attention is paid to the context within which the crime of human trafficking takes place, or to the root causes and factors that exacerbate vulnerabilities extending far beyond the narrow focus of trafficking.

### Sex workers are agents of change

So what choices do sex workers and sex worker organisations have if they want to address exploitation and vulnerability in the sex industry? Some collectives [explicitly state that trafficking and modern slavery are unnecessary concepts](#) that were forced onto the Global South by the Global North. Others try their best, despite a critical lack of funding, to leverage anti-trafficking spaces in order to amplify the voices of sex workers and to prevent harmful policymaking.

Since its inaugural European Conference on Sex Work, Human Rights, Labour and Migration in 2005, the International Committee on the Rights of Sex Workers in Europe (ICRSE) has always understood and conceptualised trafficking as a migration and labour rights issue. However, this has not translated into sustained engagement with anti-trafficking stakeholders and policymaking mechanisms. This is partly due to a lack of resources. But it also reflects a recognition that sex workers are not welcome in anti-trafficking spaces, where a dogmatic approach to prostitution as a form of slavery prevails. It's exhausting and dispiriting to routinely enter into conversations where sex workers' voices are ignored and misrepresented as 'pro-trafficking', or as a 'disguise for pimps and traffickers', so we have been careful about where and when we engage.

That said, over the last few years ICRSE and several of its members have increased their engagement with anti-trafficking policies and platforms, with various degrees of success. This is reflected in a recent collaborative partnership framework facil-

itated by ICRSE under the banner of '[Rights not Rescue](#)'. This framework seeks to add a fifth 'P' to the globally established '4 Ps' approach. In addition to prevention, protection, prosecution, and partnership, we would add policies that don't harm and don't exacerbate vulnerabilities.

Despite widespread rhetoric regarding the need for victim-centred approaches to anti-trafficking interventions, the viewpoints and experiences of communities that are vulnerable to human trafficking are routinely ignored because they are regarded as politically inconvenient. This is chiefly because the most impacted communities comprise undocumented migrants and precarious and often informal sector workers, including sex workers. Sustained engagement with these groups would reveal that there are no easy solutions, such as punishing individual perpetrators. It would instead underscore the need to grapple with larger questions of security, migration, labour and social justice policies, and the design of economic systems.

Human trafficking and modern-day slavery have been sometimes described as [global epidemics](#). This analogy isn't very helpful, so let instead use a real pandemic: the HIV/AIDS crisis. As part of this crisis, sex working communities have been recognised as one of the key affected communities whose voices and experiences are crucial to formulating policy responses. International organisations and policy makers focusing upon HIV/AIDS tend to behave quite differently to their human trafficking counterparts. In the HIV/AIDS policy field, [UNAIDS](#), [WHO](#), [UNFPA](#), and [UNDP](#) have called for the decriminalisation of sex work and elimination of unjust non-criminal laws and regulations against sex workers. They also recognise that violence against sex workers must be prevented and addressed in partnership with sex workers and their organisations, and that sex workers and their organisations should be meaningfully included in policymaking. And, finally and most importantly, they have found that, in the context of consensual adult sex and sex work, criminal laws actually cause harm, especially for already marginalised groups. Criminal sanc-



tions against sex work contravene a number of human rights, including the right to equality before the law and equal protection of the law without discrimination; the right to be free from cruel, inhuman, or degrading treatment or punishment; and the rights to privacy and to health.

These responses to the HIV/AIDS crisis point to a vastly more constructive model of engagement than the rescue, rehabilitation, and intensified policing associated with anti-trafficking. As a rule, anti-trafficking victims are viewed as people who lack agency and who need to be rescued and rehabilitated. The meaningful inclusion of affected communities within anti-trafficking approaches would undercut this simplistic model, and enable a fundamental shift away from a narrow criminal justice approach and towards an economic and social justice approach grounded in migrant and worker rights.

Under this broader approach the criminalisation of migration and the sanctioning of undeclared workers would be recognised as barriers that exacerbate vulnerabilities. Undocumented migrants and informal workers, including sex workers, would be supported in their unionisation efforts. Sex workers and their organisations would be consulted and involved in anti-trafficking and anti-violence policies and interventions. Communities in vulnerable positions would be seen as agents of change, not agency-less subjects in need of rescue. Human and labour rights could be recognised and respected.

#### Not enough for a ‘modern-day slave’

Around ten years ago there was a shift in the terminology: ‘modern-day slavery’ – an idea not embedded in international legislation – began to be used interchangeably with the legally defined crime of human trafficking. This shift had important effects. The [modern-day slavery terminology](#) intensifies the focus on exceptional cases of abuse and exploitation, which enables states to concentrate support and help on victims of the worst of the worst. People who are deemed to have ‘suffered less’ remain under the radar and fall through the cracks of an eroding social safety net. People who experience everyday abuse

and exploitation are not regarded as modern-day slaves, and can therefore be detained, deported, or sanctioned for their undeclared labour or other migration- or prostitution-related offences.

This is illustrated by ICRSE’s [latest community research](#), which was realised in partnership with twelve sex worker rights organisations from ten European countries. Our final report found that sex workers whose victimisation was classified as human trafficking were able to receive adequate support and referrals to services. Experiences that did not meet the threshold associated with human trafficking were more often than not greeted with indifference. In some cases filing a complaint resulted in threats of eviction or, in the case of migrant sex workers, deportation. We saw no evidence of cases of everyday abuse being referred to victim support services, despite high-level investment from European institutions in programmes to prevent violence against women and marginalised groups.

Sex workers and their organisations continue to [challenge punitive anti-trafficking policy](#) frameworks that target their workplaces and clients, rather than traffickers. Over the last twenty years, sex workers have not only had to combat the criminalisation of sex work, but have also endured global crises such as the 2008 financial crisis and the ongoing COVID-19 pandemic. They have also been faced with the erosion of human rights, shrinking civil society spaces, and volatile political environments.

Prostitution prohibitionists claim that trafficking increases in times of public crisis, but the reality is that poverty, precarity, and the need to cross borders to obtain a better life are the key factors leading people to sell sex. The post-COVID recession will be a crucial time to determine which approach is best suited to protect those most at risk in our society. Do we want a punitive approach that denies the root factors making people vulnerable to exploitation and trafficking? Or a community-led approach, where sex workers engage with policy-makers and other marginalised communities to shape the decisions that will affect their lives?

## INTERVIEW

# Why the AFL-CIO both sits at the table and marches in the streets

Cathy Feingold with Neil Howard

Neil Howard (BTS): You've been a part of the American labour movement for a long time. If the goal is to improve workers' lives, do we need to push for incremental changes on 'the inside' or use the freedom of 'the outside' to fight for a new vision?

Cathy Feingold (AFL-CIO): I think you need both. The world is experiencing a crisis of multilateralism right now – our existing multilateral framework is not fit for purpose. It was built in a very different moment. So, as activists and as organised labour, we need to be working on the inside to renew this framework. We need to try to build out a global architecture that's useful to us, so that we can then use it as a tool for our organising. At the same time, we absolutely have to be on the outside pushing for a new vision. What should the next iteration of a multilateral approach look like? What systems do we need to build?

It's not either/or. If we were having an academic conversation, you and I would just talk about the system we want and need. And we do need to spend time re-envisioning the global framework so that we are constantly realigning our strategies. But the reality is, I have to go to work and try to implement something to make change happen. We need both insiders and outsiders for that to work. Insiders, mind you, need to have their eyes wide open to the fact that the system they're working within is not fit for purpose. It was built for a different set of reasons. And it's struggling right now.

Neil: Could you concretely spell out the benefits of working within the system? From an advocacy standpoint, what works about working on the inside?

Cathy: For example, as a labour movement we believe that there is power in negotiation and in tripartism between workers, governments, and business. Many of our current systems were built in a moment where there was respect for tripartism. Governments, trade unions and civil society, and business leaders came together to try to shape responses to some of the biggest global challenges that we had.

There is still value in that. Take the International Labour Organization's new convention and recommendation to end violence and harassment in the workplace. It's being ratified all over the world, and that will give movements new tools and new ways of talking about transforming their reality. That's important. It's important when you go to countries and say, 'employers agreed to this, governments agreed to this. This is not just an outsider approach, but it's something that we've all shaped together.' We need to have that ability to build global architecture with various players at the table.

Unfortunately, the multilateral system is becoming increasingly dysfunctional and unable to respond to the enormous challenges the world faces. Just look at the World Trade Organization these days, or some other UN bodies and processes. And so we constantly need to be on the outside asking, 'what are the tools that we need? Which tools don't we have to build the vision or the framework that we need to really transform our communities?'

Neil: So you need people on both the inside and the outside, and a degree of coordination between the two. Those on the outside provide the vision and open up the Overton window, while those on the

inside actually leverage power for change.

**Cathy:** Correct. Often when shaping policies, if you just had an outsider approach, if you just protested in the street and no one listened to you, would you really be able to implement and shape a new vision? Probably not. But if you pair up protestors putting pressure on the multilateral system with insiders trying their best to build a framework that we'll be able to use on the outside, that back and forth can be really powerful.

**Neil:** In theory it sounds excellent, but to what extent does coordination actually exist between loud voices saying radical things on the outside and those taking the longer road on the inside?

**Cathy:** As far as the labour movement goes, I think we often have one foot in each place. We are marching in the street with our allies, whether we're unhappy at what's being discussed at the G20 or at a climate event. And we're in the inside trying to negotiate with employers and governments to really get something through that would improve the well-being of workers and their families. The labour movement sees the power of being in both places, and I do think there is intentional coordination with civil society organisations. We can't do this alone and building coalitions across movements is critical to advancing a transformative agenda.

Something I've learned through experience is that refusal from the outset is a bad strategy. I'll use the trade discussions, in which I've been immersed for many years, as an example. If you say no before you reach a table to see what a document looks like or what you might be able to do, then you really cede a lot of space. If the moment they announce a trade agreement you shout, 'No! We hate it because it's part of the neoliberal system, and so we're just going to hate it,' you have ceded whatever space you had to be listened to. You need to always stay grounded on the members and values that we represent. We often end up having to oppose agreements like the Trans Pacific Partnership and other trade agreements but that is after we put forward our proposals.

Sometimes that may be necessary if it's just a horrible, horrible proposal. But most of the time I would say that you forfeit your ability to have any role in shaping things if you don't maintain a strategic insider-outsider approach.

The current set of crises – the pandemic, growing economic, racial, and gender inequality, climate change, attacks on democracy, etc. – provide an important opportunity for movements to not only critique the current system but to put forward bold and transformative ideas. We need to make sure that as we emerge from these crises that we are not going back to a past model but rather building towards a new social contract that puts the well-being of workers and the environment at its core.

**Neil:** How do you apply that general lesson to the field of trafficking and modern slavery, and specifically to the Palermo Protocol on trafficking? One outsider critique of these concepts is that they exclusively focus attention on the worst of the worst. And, as those concepts have become dominant, they have drawn attention away from widespread forms of everyday exploitation. They have caused us to not only forget about everyday forms of inequality but to naturalise them by focusing on the extremes. What's your response to that critique?

**Cathy:** Workplace exploitation is a continuum, right? Just look at what's happening in the Uyghur region of China – the Xinjiang Uighur Autonomous Region (XUAR) – where the Chinese government runs a massive programme to detain and persecute well over 1 million Uyghurs and other Muslims and Turkic language speakers. Aside from running the largest internment and forced labor programme of an ethnic and religious group since the Holocaust, China has broadly deployed state-of-the-art surveillance hardware and artificial intelligence software to monitor the lives of workers and their families. This benefits more than just the Chinese government and its state-owned enterprises. Multinational corporations (MNCs) from around the world profit greatly from the forced labour in this region and are reluctant to respond to the Coalition to End Forced

Labour in the Uyghur Region's [call to action](#) that demands that they leave the region and end the use of forced labor in their supply chains.

The system of repression and forced labour and the complicity of major multinational brands stems from the same set of economic policies that allows labour to be exploited in the first place. What I've found in the trafficking and modern-day slavery space is there's not much critique of the actual economic system that allows this to happen. There's little critique of the relationship between labour and capital. And, I would say, it's not surprising when you look at the roots of the human rights movement. The human rights movement was meant to soften the economic model rather than overthrow it. It was meant to be a Band-Aid on it, something that makes it a little bit better.

wage, and basic safety protections. They apply this same model throughout their supply chains, where they intentionally distance themselves from taking responsibility for the workers who produce for them. So many of these companies weaken labour regulations while at the same time saying they want to eradicate slavery because it's so horrible. They fail to see that they are shaping rules of the economy that lead to labour exploitation.

**Neil:** So why is Silicon Valley pumping money into slavery and trafficking specifically, do you think?

**Cathy:** Because it's something that most people can get behind from a moral standpoint. You can back it without having to critique the system. And, even in a moment of real tension in the United States, it's one of these issues that continues to have bipartisan support.

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"If you free a group of slaves and don't change the system that allows people to be slaves, you're not addressing the systemic problem."

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In the US context, a lot of the anti-trafficking money in recent years has come from foundations that got their start with major funding from Silicon Valley, which historically has been anti-union. The major players in Silicon Valley want workers to remain flexible and want them to be independent contractors. The recent campaign in California over Proposition 22 shows the amount of resources that many Silicon Valley companies are willing to invest to ensure that labour stays cheap and flexible. Companies like Doordash, Instacart, Uber and Lyft [spent close to \\$200 million](#) to put this proposition on California's ballot in the recent November 2020 elections. It was the most expensive ballot measures in US history, and was written by companies seeking to increase their profits by denying workers the right to paid sick leave, a minimum

Talking about people being enslaved is a way of building and channelling basic moral outrage. Rich people do not want you to have moral outrage about the economic model that they're profiting from. They want a complete disconnect. They want you to believe that the reason there is modern-day slavery has nothing to do with the way the rules are shaped in the global economy.

That's been one of the challenges for the anti-trafficking movement. There are exceptions – there are some fantastic groups doing really important work – but most don't come out with a huge critique of the neo-liberal model, right? It's about freeing the slaves, that whole framework. But if you free a group of slaves and don't change the system that allows people to be slaves, you're not addressing the systemic problem.



Neil: So in other words modern-day slavery is often being used as a fig leaf for distracting attention away from the structures underpinning all exploitation.

Cathy: Correct. There are many reasons people get into this field. The labour movement believes that to really address forced labour and trafficking, strengthening workers' rights must be part of the solution and workers must be part of shaping the needed policies and programmes. Some organisations working in the field definitely come from a faith-based perspective or a moral calling, and they do not see worker rights as a key issue. I believe many groups don't want to address root causes. They instead want to frame it entirely from a moral standpoint and not engage in the needed work to transform a system that has produced enormous wealth and at the same time extreme exploitation.

I find it so interesting that the libertarian-leaning Silicon Valley has been a major funder of modern-day slavery and anti-trafficking work. Remember when everybody was clapping their hands a few months ago about essential workers? At the same time there was huge opposition from the business community to a temporary emergency health and safety standard that would have helped keep people safe and healthy during the pandemic. Huge opposition. But these same people were taking out hundred-thousand-dollar ads in the Washington Post saying we salute our frontline workers who are getting sick without supporting regulations to ensure worker safety during a pandemic. It's rank hypocrisy.

The pandemic has also further exposed the lack of protection for migrant workers throughout global supply chains and in the care economy. Many of these same companies that fund anti-trafficking programmes also benefit from weak protections for migrant workers. The system of work visas, recruitment fees, and the constant threat of deportation make migrant workers vulnerable to trafficking and forced labour.

To go even broader, it's the same critique we have about traditional corporate social responsibility.

CSR is not about systemic change. It's about public relations and not about transforming the way you do business. That is why the labour movement supports models that are worker-driven and binding, that are shaped by workers, and that come with real consequences when there are violations.

Neil: Are we thus doing a disservice to progressive forces and to labour generally by using the terms forced labour, human trafficking, or modern-day slavery, given that they are so clearly exploited by the powerful to maintain the status quo?

Cathy: 'Forced labour' is a term that's well defined, and its elimination is a fundamental principle of the ILO. It just says what it is: you're forced to labour. That's clear.

Now 'modern slavery', that's a very problematic term. The United States is still grappling with slavery and what that has meant for our economic system. Our current system was built on exploitation of labour and particularly the labour of people of colour, who were enslaved. And you can see how our system continues to be built around that. So I'm not sure we need the word 'modern-day'. I don't know why we need to change that framework. We're trying to take on an economic system that creates huge wealth and profit for a few through enslavement and exploitation. There's nothing modern about that.

The current debates in the United States are, in a very positive way, causing people to really look at what it has meant that this country's system is built off the enslavement of people of colour. That's the other piece that I never hear from the trafficking and modern-day slavery movement. Perhaps I'm just not in the right rooms for these conversations, but we don't hear about the intersection with race in all of this. You can see this clearly in Mauritania or around ethnicity in the Uyghur region in China. You have to create a construct of others to justify subjecting them to the most severe forms of exploitation in your system. There's nothing modern about that.

So I've never quite understood why 'modern-day'

has been added to 'slavery'. We've had this neoliberal model for over 40 years, and within the context of that model it was framed as modern. But we know that the whole system is built on that.

Neil: That's actually one reason for pause around the definition of forced labour. It's a clear enough idea, but the definition is inherently individualising. It's about interpersonal coercion, not the structural coercion inherent to capitalism and market life. This individual focus hides why some people have no other option but to take bad and exploitative work.

Cathy: There are of course individual power dynamics involved in certain instances, but it all comes back to a system. Again, I'm focused these days on working with a global coalition to eliminate forced labour in the Uyghur region of China. We knew from the beginning of the campaign that we would need to move beyond a campaign of moral shaming to one focused on ending the economic structures supporting forced labour. Sometimes people ask why we're doing a corporate campaign around this. Well, it's because we are trying to undo the ways that corporations benefit from a system of forced labour in that region.

The labour movement approaches this as we do with everything, by looking at systems and the need for a collective response. You're not going to address forced labour by having individuals raise their hands and say, 'please change my work conditions.' We've never found that to be the way that you shape power relations. If trafficking affects some of the most vulnerable workers, including migrants, then you must look at programmes that support migrant worker organising and power building in migrant communities. So I understand the importance of that critique, but I'm not sure that's how the labour movement has ever viewed it. The way we take on forced labour is from a systems approach and from a collective response.

Neil: We've reached the twentieth anniversary of the Palermo Protocol on trafficking. What's your take? Has it been a success? Or has it caused more trouble than it is worth?

Cathy: Whenever you have one of these anniversaries, I think it's important to pause and remind yourself that all these pieces of global architecture are flawed. They're imperfect. They have been put through a tripartite or multilateral set of negotiations, and they've come out very watered down. So the real question we as movement should be asking is, 'were we able to use the focus on this piece of global architecture to build effective movements?'

I'm less interested in the UN meetings of people flitting around and talking about it. I want to know if we used that global architecture to fuel effective global movements to end trafficking and to end the systems that allow trafficking and forced labour to occur. And if you ask that question, I would say we're not there yet.

The way supply chains have been built allows precarious workers to have work one day and no work the next. Some of what goes on in the Uyghur region is simply astonishing. Our clothes and technology have been made with forced labour and all I hear are companies telling me, 'well, you don't know how complicated it is to leave China.'

We have not yet used Palermo to build effective movements to transform the system that allows this type of extreme labour exploitation to occur. And so we need to ask ourselves, in this current moment, is that a tool that is still effective? Is there something more that we need? I would say that if your movement does not have an analysis of power, and does not have an analysis of the intersection of how power works and of changing the economic system, then your movement does not have the elements it needs to carry out what was in the spirit of Palermo.

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*This interview has been edited and condensed for clarity.*

# Is human trafficking truly an intractable problem?

Helga Konrad

After two decades as an anti-trafficker, two things are clear to me. First, there are no magic bullets for success in anti-trafficking. Preventing and combating trafficking in human beings requires knowledge of the patterns, factors, and circumstances that allow trafficking to happen. Second, there are no purely technical solutions. Anti-trafficking efforts are political in nature, and political responses are required to protect people and provide effective assistance to victims.

Governments bear primary responsibility for this and it is their job to ensure that they comply with their international obligations. They must, for example, ensure that victims are not subject to criminal sanctions. They must also refrain from expelling potential victims due to their unlawful migration or labour status. This is all already stipulated in international agreements; what is needed is the political will to put those into practice.

It has been twenty years since the Palermo Protocol came into force. Over that time anti-traffickers have participated in endless negotiations around documents and declarations, in conferences, seminars, workshops, and trainings. Despite this, trafficking has persisted, as have questions as to whether and when governments will ever muster up that political will. How successful can we have been as a field?

Frankly, I am unsure. My experience tells me that action is still often taken simply for the sake of action, which neither leads to nor produces meaningful results. Too much effort has been spent on symptoms, while too little has substantively addressed causes. We have not yet moved away from the cookie-cutter approach to policy. And still there is no integration between anti-trafficking and more significant areas

of policymaking, such as development cooperation, technology transfers, trade, and investment. Would it be better just to call the anti-trafficking field an anti-trafficking industry?

Worse, the partnerships which are often vaunted in this world are frequently superficial.

Partnership, in general, means cooperation and coordination between equals based on mutual trust. Partnerships should be mutually beneficial and oriented towards the same goal: the eradication or decrease of trafficking and the prioritisation of survival, wellbeing, and freedom. However, in most cases, funding is provided by destination countries that typically suppress cross-border migration. Their funds strongly influence the anti-trafficking agenda and define its scope. This has meant stepping up border controls and subordinating human rights protections, thereby undermining the protection of victims.

Anti-trafficking programmes should be seen as components of sustainable development, anti-discrimination, and anti-violence work. They should support the development of long-term, comprehensive strategies and seek long-term solutions. The fundamental problem is that they do not. Money has increasingly shifted attention away from issues of development, equality, and human rights to issues of state security and migration. It is high time for all of us, but especially for governments and government officials, to understand trafficking from the perspective of human rights and development.

It is also vital that we develop greater accountability. This applies both to governments and to large institutional actors like UN agencies, since they play a huge role in decisions over how resources are al-

located. Despite this, they know surprisingly little about the impact of their anti-trafficking activities on trafficked persons, vulnerable groups, or on societies in general.

Both governments and anti-trafficking institutions are wary of these kinds of evaluations because they worry that they might reveal that money has been wasted, or even that measures have proved harmful. This is a problem. Evaluation should be an integral part of all anti-trafficking work. In the long run, governments, institutions, and societies at large will benefit from systematic impact assessments, because they will help prevent pouring good money after bad.

If we want things to change in this field, we need less rhetoric and greater focus on concrete implementation in the service of human rights. Less lip-service and more coherent policy informed by expertise

and experience. We need a culture of effective and open evaluation; it is high time for a new generation of progress assessments and reports.

Above all, governments need not simply to control migration and prostitution, but to adopt diverse, long-term policies and strategies in dealing with unemployment and labour migration. They need to develop strategies other than trying to get rid of victims of trafficking as quickly as possible – strategies such as joint programmes of (re-)integration and more socially-balanced economic programmes. In the end, we have no alternative but to engage with the root causes of human trafficking, no matter how complex, difficult, and forbidding they may be. In our fight against trafficking in human beings we must put an end to the complicity of silence, to the complicity of indifference. We must ask ourselves what we have really achieved as a field and what we need to change.



# People power to end exploitation?

Mika Leandro

What is the best way to achieve meaningful change and advance social justice? Is it working for governments, where power is concentrated? Or in campaigning organisations, which can leverage popular pressure? What of the media, where your reach is wide? Or academia, where you can speak truth to power? These are hotly debated questions and simple answers are hard to come by. Each has its merits, and most have their drawbacks.

I have been a professional campaigner for a long time. I currently work for WeMove Europe, which seeks to build people power to transform Europe for future generations and our planet. Prior to that I was campaigns director for Walk Free – the ‘movement to end modern slavery’, an influential player in the anti-slavery field. In this piece, I aim to reflect on certain key, behind-the-scenes considerations underpinning strategic choices for organisations like those I have worked for, which attempt to harness people power via online mobilisation and offline organising. I want to be open about what we do and why, so as to contribute to a wider conversation about how we and our allies might do things better.

## Key questions for digital campaigners

These are the questions we ask ourselves when conceiving, planning, and managing campaigns.

**1) What is ‘political’ for people?** What is in the media? What are people talking about in cafes and bars? These questions are vital for mass mobilisation campaigning organisations. People taking collective action is where our power lies, and we know that people are more likely to take action when there is energy around an issue. This means that we have to feel the pulse of popular sentiment and adapt to it. For example, at WeMove we are current-

ly running a campaign in support of Unconditional Basic Income (UBI) – a regular income for everyone regardless of how poor they are.

With the coronavirus pandemic and so many struggling to make ends meet, this idea, which was once too radical to touch, has now become popular and suddenly people are interested. We can feel a pulse there and our campaign at WeMove seeks to quicken it. But that’s new. When I worked at Walk Free seven years ago, a researcher approached me about running a UBI campaign. I liked it and was sympathetic, but at that time it wasn’t going to work because it just didn’t have the traction. Linking the campaigns we run to what has public traction puts constraints on what we are able to do.

**2) What needs to change?** When planning a campaign, we have to ask ourselves, ‘will it challenge the system? Will it address the root causes of the problem?’ We ask ourselves, ‘how can we make sure that the campaigns we’re running don’t just lead to incremental change within a system that isn’t working, or even worse, content ourselves with only stopping bad things from happening?’ What we want are campaigns that address root causes, so we ask ourselves whether winning a particular campaign will be a stepping stone forwards or create a leverage point that will help us achieve bigger change.

The UBI example is again relevant here. As I see it, this campaign is for truly systemic change; it seeks to challenge the current capitalist system, inequality, and our relationship to work. UBI can help tackle poverty (and the severe exploitation that is related to it) by removing many of the barriers to qualify for financial support. But it can also drive wellbeing by giving people the economic breathing space to

further their education, volunteer locally, escape an abusive relationship, or just feel a little less anxious about the future.

But of course, not all campaigns are so clear cut and there's often serious internal debate about whether a particular idea will get to the core of the issue or not. It's hard to know if you're on the right track because systemic change takes time. You don't see impact immediately, you have to trust your gut, and you have to let go of your obsession with quick metrics. Mass mobilising around systemic change is also hard because the moments where public attention makes mass mobilisation so effective rarely last. The news cycle moves on and momentum dies down, even though you're nowhere near your goal

seemed impossible suddenly don't seem so radical. We are at a unique point in history with a major crisis on our hands – that's an opportunity to bring about progress.

### Process and its pitfalls

People working in digital mass mobilisation organisations like me get used to critics saying that petitions don't make a difference, or that the scale of the problem is insurmountable, or that campaigns sensationalise and simplify complex issues. In doing what we do, there are a variety of steps we take that don't always make sense when viewed in isolation so I'll discuss some of them to make our tactical choices clearer.

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“Mass mobilising around systemic change is hard because the moments where public attention makes mass mobilisation so effective rarely last.”

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yet. An organisation's approach also depends on the perspectives and analyses of those in the room. At Walk Free, for example, the content and even merits of systemic change were viewed differently to where I am right now.

**3) What are the opportunities?** What can be changed in this present moment? How? And can mass action on the part of the community of people we mobilise make a difference that contributes to it? These are central questions for campaigners, because if our actions can't help bring about the change we desire then we are probably not the best placed to take on this particular challenge. People power is, after all, our added value. And the key thing to remember is that different historical moments present different opportunities for mobilisation and change. Right now, the pandemic has opened a space for profound change. Ideas that

**1) ‘Petitions don't make any real difference; they just make the people who sign them feel better’.** It's true that petitions on their own rarely make a difference: decision makers need to be on board to achieve change. They do have their uses though. Petitions can help build pressure to get a decision maker to change their position, or they can support a decision maker who has decided to do something but needs to show public backing for it. They are usually just one step in a wider campaign. In the end, they ‘work’ only when they are part of something broader, with allies and ordinary people putting pressure on decision makers in a variety of ways.

**2) ‘The campaigns you run are too narrowly focused compared to the scale of the issue. You focus on one person, rather than on the system’.** A good example of this was the campaign I worked on at Walk Free to free the anti-slavery activist Andy

Hall. He had been sued by the Thai pineapple company Natural Fruit and arrested following his investigation into forced labour among migrant workers in Thailand in 2013. Our campaign was to get him released. But the idea wasn't only to help him as an individual. Andy Hall could have simply evaded by exercising his privilege and returning to the UK, but his priority was to make a stand for migrant workers at whatever personal cost, and he stayed there for years fighting. We knew that telling a personal story which our supporters could relate to would allow us to tell a broader story that may not otherwise have been heard – in this case of forced labour in Thailand, which went on to become a major international issue.

Of course, there are serious drawbacks to this approach. In this particular case, you have to ask whether it was the best idea to tell a story of a relatively wealthy white person to other relatively wealthy, mostly white people in the hopes of catalysing action on an issue primarily affecting poor people of colour. We were arguably complicit in reinforcing orientalist ideas and I learned a lot from our decisions. Thankfully, more and more organisations are reflecting seriously about what they depict in their campaigns, why, and how.

**3) 'You sensationalise and over-simplify'.** Sometimes digital campaigning organisations act too fast; sometimes we test for content that inspires people and, in the process, use frames and narratives that are problematic. You see this with 'modern slavery' and with many other issues. Our aim is

to tell engaging stories that motivate people without reinforcing problematic messaging. That is a hard balance to strike and we don't always get it right.

That doesn't mean we're not trying. During the campaign design process a team will have serious internal conversations about how to minimise the risks, they will have their content reviewed by experts, and try to find a framing and narrative that points towards systemic change. At WeMove, where we campaign on the EU level, we're frequently told that we're being overly complicated. We don't try to excessively dumb down what is happening in Europe. We do try to relate it to people's own experiences. And we are very conscious of the need to shift narratives, because ultimately, she who controls the narrative wins.

In the end, when I ask myself how we can best end exploitation, it is clear that people taking action together towards systemic change and changing the narrative is key. But there is no way we can achieve change in a silo. Truly meaningful change only happens when people mobilise, the media tells the story broadly and helps share the new narrative, academia proposes alternatives, and government listens and acts. Change is hard. That's why it's so important for different actors to understand each other better and work together. We are all part of the same ecosystem and right now, in this moment of history, we all need each other more than ever.

# The art of using supply chains to defend workers' rights

Kathryn Babineau and Jennifer Bair

Supply chains have been heavily criticised since the onset of COVID-19, as shortages of PPE and other medical equipment have laid bare the vulnerabilities they create for consumers. But labour and human rights activists were raising the alarm over the dark side of [supply chain capitalism](#) well before the current crisis. In many industries, the global brands that sit atop these chains directly employ only a relatively small number of workers. They depend on armies of contractors and subcontractors to actually produce the goods they sell or market. Typically smaller and less profitable than their clients, these suppliers compete for orders from lead firms and frequently, to win them, they must find ways to cut costs. Labour-related costs are almost always their first port of call. This, in a nutshell, is how supply chain capitalism exerts downward pressure on wages and working conditions worldwide.

Recently, legal efforts to address this problem have focused on trying to influence lead firm behaviour. Both 'hard law' like the UK Modern Slavery Act and 'soft law' projects like the United Nations Guiding Principles on Business and Human Rights rely on lead firm transparency and due diligence requirements to rein in the excesses of supply chain capitalism. Critics of this model frequently note that, beyond reporting, it imposes no substantive obligations on buyer firms. They are not required to improve conditions for suppliers or the workers their suppliers employ. As such, transparency legislation is highly compatible with conventional corporate social responsibility (CSR) schemes, which rest on two core principles: voluntarism and unilateralism. Lead firms (or closely aligned third parties such as commercial auditors) decide what standards will be acceptable in their supply chains, when they are being met, and what happens if they are not. Often

there are no consequences for suppliers that fail to comply with standards.

The Fair Food Program (FFP), created by the Coalition of Immokalee Workers (CIW), represents a radically different approach to supply chain regulation. In our contribution to this series, we examine why the FFP works and how it differs from conventional CSR approaches. We also emphasise the conditions that have enabled the FFP not just to succeed, but to expand when so many other labour organisations remain on the defensive. We begin by explaining how the FFP grew out of anti-trafficking work in Florida's tomato industry, and the realisation that a criminal justice approach to labour trafficking was never going to sufficiently address the root causes of the problem in agricultural supply chains.

## [Towards a root cause analysis](#)

Until recently, Florida's fresh tomato industry was a hotspot for labour trafficking. The civil rights division of the United States Department of Justice described the fields in central and southern Florida in the late 1990s as "[ground zero for modern-day slavery](#)." This is where, in 1993, the group that would become the CIW began to organise farmworkers. In addition to low (and declining) wages, health and safety hazards, and verbal and physical abuse, the CIW shone a spotlight on forced labour in the fields. They also pushed for the passage of the Trafficking Victims Protection Act (TVPA) in 2000. Once the TVPA was enacted, CIW cooperated in a series of successful forced labour cases, [providing critical assistance to government investigators](#).

While these victories were widely celebrated at the time, they also pointed to a deeper challenge: the fact that serial prosecutions were necessary sug-



gested that the TVPA was not *detering* would-be traffickers. Preventing crimes from taking place is always preferable to intervening once injustice has already occurred, and it requires a focus on root causes – in this case, the structural conditions that enable forced labour in the fields.

Prominent among these is the pervasive use of farm labour contracting (FLC). Under the FLC system, contractors, known in the industry as crewleaders, provide labour for growers by recruiting and managing crews of workers. This creates fertile conditions for crewleaders to exploit the workers they recruit, with abuses ranging from wage theft to, in extreme cases, forced labour. These problems persist because other actors in the supply chain tend to assign sole responsibility for them to the contractor. Both farmers and consumers can claim that they have no way of knowing if workers are being trafficked or otherwise abused by the crewleaders contracted to harvest crops.

As we learned from our research on agricultural supply chains, outsourcing via the FLC system has long been central to the labour process in commercial farming, and the problems associated with it are widely known. One US official whom we interviewed emphasised that the FLC system “allows [growers] to close their eyes and not really see what is going on with those workers; they feel shielded from the problems of wage theft, substandard housing, and other responsibilities. And if they see awful things, they can say that they aren’t responsible.” The question for CIW was how to eliminate the plausible deniability of actors higher up the chain; in other words, they needed to create a way to close the accountability loophole in the supply chain.

#### Leveraging supply chains to empower workers

In order to achieve meaningful change for farmworkers, CIW decided to leverage the dynamics of the supply chain. Instead of targeting individual farms that grow tomatoes, CIW decided to focus on



the small and highly concentrated set of powerful buyers that purchase the bulk of fresh tomatoes from Florida suppliers: retailers, food service companies, and restaurant chains. As large, visible corporations with names well known to consumers, the companies purchasing tomatoes made better targets for consumer-driven activism, like boycotts and student-led campaigns, than the farms themselves.

Building a broad alliance of workers, student and faith groups, and other allies, the CIW successfully orchestrated boycotts of fast food companies and grocery chains in order to pressure buyers to sit down and negotiate with CIW. Four years after the launch of the Fair Food Campaign, this strategy finally bore fruit: Taco Bell's parent company, Yum Foods, signed the first enforceable agreement with CIW, committing it to buy Florida-grown tomatoes only from farms that comply with the [Fair Food Code of Conduct](#), a rigorous set of labour standards designed by the CIW with extensive worker input.

With the first buyer agreement executed, the CIW's Fair Food Campaign [continued to pressure](#) others to join suit and one by one they did. The Fair Food Program (FFP) went into full effect in Florida's tomato fields in 2011, after reaching a critical mass of signatory buyers and growers. Under the programme, farms that do not comply with the Fair Food Code of Conduct face an escalating series of sanctions, including a suspension of all tomato purchases from participating buyers. There are a few '[zero tolerance](#)' provisions in the code that merit automatic suspension, one of which is forced labour.

The code also requires all growers participating in the FFP to hire and pay farmworkers directly. Crewleaders continue to operate on farms as supervisors, but they are no longer the employers of those they supervise as is the case under the FLC system. Instead, workers are employed by the grower, who issues each worker a pay cheque in their name – a practice that dramatically reduces the scope for trafficking in the tomato supply chain and ensures that growers are held accountable for any abusive practices that occur.

Compliance with the direct hire requirement, like the other elements of the code, is overseen and enforced by the Fair Food Standards Council (FFSC), the Fair Food Program's monitoring arm. In addition to conducting yearly audits, which include extensive worker interviews on all participating farms, FFSC staff also run a 24-hour helpline that workers can use to report suspected code violations. [FFSC reports](#) indicate that, to date, auditors have conducted more than 26,000 worker interviews over the course of 264 audits; drafted and supervised the implementation of 189 corrective action plans for participating growers; and fielded over 1,800 complaints from workers via the helpline. The CIW, meanwhile, conducts education sessions on all participating farms so that workers know about their rights and responsibilities under the Fair Food Program.

While tomatoes continue to be the programme's core crop, the FFP has expanded to include both new crops (primarily bell peppers and [strawberries](#)) and new buyers, including [Walmart](#), which joined in 2014. It now includes participating growers in [eight states](#) stretching from Florida to New Jersey. Taken together, these efforts constitute one of the most rigorous labour rights monitoring and enforcement efforts in the history of American agriculture.

#### [Learning from successful regulation](#)

The FFP model works largely because it differs from conventional CSR in two ways. First, the FFP is not a unilateral, business-led initiative designed and overseen by industry actors. Farmworkers, as represented by CIW, are parties to the Fair Food Agreements. The Fair Food Code of Conduct reflects their experiences, and they play an active and ongoing role in enforcing the code through their participation in audits and their use of the helpline. Second, the FFP departs from the voluntarism of the traditional CSR model. When buyers sign Fair Food Agreements they make binding commitments that are enforceable, when necessary, by arbitration. Similarly, the FFP uses market consequences to enforce the obligations of growers; in other words, buyers are prohibited from purchasing from non-compliant suppliers.



Can this model be replicated? The [worker-driven social responsibility model](#) created by FFP has been replicated successfully both in the United States, in [the dairy sector](#), and abroad, including a new agreement to address [gender-based harassment and violence in Lesotho](#). Other campaigns are ongoing in a variety of sectors around the world, including the [US construction industry](#). So, the real question is, what are the conditions under which this model can be replicated?

To answer this query, we need to identify the model's elements. The Fair Food Program grew out of organising efforts that, over time, gave CIW intimate knowledge of supply chain dynamics and an understanding of the issues confronting the migrant worker community. Beyond its roots in the CIW's work, the creation and expansion of the FFP rests, ultimately, on the willingness of consumers to put pressure on lead firms and on the susceptibility of corporate targets to this kind of mobilisation. In addition to consumer-facing brands, unequal bargaining power is another critical element of this supply chain model. CIW recognised that lead firms can use their weight to require suppliers to meet labour standards, just as they require them to meet quality standards or price specifications. Lead firms are also the supply chain actors best positioned to absorb the higher costs associated

with better standards; in the case of the FFP, this includes a “penny per pound” premium that signatory buyers pay to augment workers’ wages. More symmetrical supply chains may offer fewer opportunities to leverage lead firm power into improvements for workers. Finally, the FFP is supported by a legal system that includes both state and federal labour regulations (even if poorly enforced) and a functioning judicial regime capable of upholding the Fair Food Agreements in the event of a dispute. Sustaining supply chain labour agreements where these elements are absent will be more challenging, [as developments regarding the Bangladesh Accord on Fire and Building Safety suggest](#).

While these caveats make clear that there are limits to this model's replicability, worker-centred supply chain regulation may be possible in contexts that share these conditions: the presence of an organisation with the knowledge and legitimacy to represent workers, and the existence of one or more lead firms with sufficient market power over suppliers and recognisable brands vulnerable to consumer pressure. Where these elements are present, supply chains might represent opportunity structures that can be mobilised to workers' benefit.

## It isn't just anti-trafficking: we must always ask whose interests we really serve

Bandana Pattanaik

The Global Alliance Against Traffic in Women (GAATW) has been working on issues associated with human trafficking since 1994. While trafficking has always been a core component of our work, we are well aware of the negative and counter-productive effects that anti-trafficking interventions frequently produce. And these effects have caused us to question whether it is better strategically to be on the [inside, outside or somewhere in between](#) – the main thematic focus of this feature – many times.

we were not prepared for the divide which emerged amongst people who otherwise agreed with each other on many core issues. Colleagues were in solidarity with sex workers and working-class migrants. They were worried that the anti-trafficking framework was being used to violate the rights of migrants and sex workers. They agreed that policies should be based on evidence. They were unanimous in their position that states must move away from a protectionist approach towards women that curtails

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“It is one thing to draw attention to problems and silences. It is quite another to get states and corporations to change course.”

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GAATW's members made this a key question at our tenth anniversary meeting in 2004. This was a major event in the history of our organisation, with more than 200 participants from 42 countries around the world. We welcomed representatives from our member and partner organisations, some of our donors, organised sex workers and domestic workers, academics, colleagues from the UN including the first special rapporteur on trafficking, and individual experts who had worked with GAATW since its inception. It was a forum for honest discussion, respectful debate, and strategic planning for the alliance.

We knew that it would not be easy to arrive at a consensus in such a diverse gathering. However,

their right to mobility and self-determination and focus on protecting their rights instead.

The main source of division was over the degree to which anti-trafficking could be held responsible for abuses against workers and migrants. Everyone accepted that there were problems which pre-dated the rise of anti-trafficking, but opinion remained strongly divided over whether or not anti-trafficking was making things worse or better. It also became clear that these differences of opinion were partly tied to differences in position. Colleagues who worked with trafficked persons on a daily basis favoured a different approach to researchers and analysts. Some friends championed the need for a



‘paradigm shift’ and for ‘jettisoning the framework’. Others worried that their hard work with trafficked persons was being completely dismissed by those who do not have ‘grassroots’ experience.

### Building beyond silos

There were major practical consequences to this debate, since the future strategic direction of the alliance would look very different depending on which viewpoint was favoured. After much deliberation it was decided that GAATW would adopt a two-pronged strategy. One prong would critically engage with the anti-trafficking framework by documenting the human rights violations caused by specific initiatives. It would also facilitate processes of critical reflection among our members, drawing upon their own experiences and circumstances. The second prong, meanwhile, would step up engagement with migrant workers and women in low wage work, thereby taking up a much broader range of issues than those associated with anti-trafficking. GAATW had been [founded as a feminist alliance](#) in solidarity with sex workers and all working-class migrants. So this seemed like a logical strategic direction as we moved into our second decade of work.

We have continued to deepen this strategy in the years since. We have repeatedly [documented](#) the negative impact of anti-trafficking initiatives, such as stringent border controls, the criminalisation of migrants, and violence against sex workers. We have drawn attention to [excessive and misplaced spending](#) on anti-trafficking, and the ways in which a crime-control framework provides a smoke-screen for states to ignore the link between their policies and the precarity of millions of workers. We have also continued to work closely with sex workers, domestic workers, garment sector workers, home-based workers, and women farmers, and have sought to build spaces for [inter-movement and inter-sectoral dialogues](#) within civil society for mutual learning. This has meant a sustained effort to [reach outside silos](#) and build larger conversations and connections.

So have we been on the inside or outside? Perhaps we have tried to be critical insiders. As an alliance that emerged out of women’s rights movements, we have always focused on the challenges working-class women face while trying to exercise their rights to mobility and decent work. This in turn informed how we approached human trafficking. Trafficking, as we understood it, was a bad outcome caused by restrictive migration regimes and a lack of rights and protection while working. We engaged in the advocacy around the Palermo Protocol, where we underscored the need for human rights protections of trafficked persons. However, we do not see any reason to applaud ‘the anti-trafficking industrial complex’, and we definitely never saw our role as being amplifiers of – or cheerleaders for – the anti-trafficking framework.

### Changing course is easier said than done

This does not mean, however, that we have solved these strategic dilemmas. Many challenges need to be overcome in order to effectively address exploitation in the context of migration and labour, and we cannot help but worry about the limited impact that we have had. While we desperately try to hold on to our optimism, it is clear that systemic change will not happen any time soon. It is one thing to draw attention to problems and silences. It is quite another to get states and corporations to change course.

The challenges associated with the excesses of anti-trafficking measures have only grown stronger in the years that have followed our 2004 meeting. We now have a substantial evidence base showing that current anti-trafficking initiatives [will not stop trafficking](#). We do not have to look too far to see that precarity and [everyday abuses](#) are the norm rather than the exception. COVID-19 has shown very clearly that fundamental policy shifts are needed to address the multiple rights violations that millions of people experience.

Yet, we have not seen policymakers coming together to discuss these issues. Some countries have even taken steps to erode labour rights further over

the last few months. Migrants who were forced to return home in the early months of the pandemic are now returning to work. When they resume work they will do so under the same or worse conditions. Those unable to return face hunger and deprivation. The anti-trafficking framework is [inadequate](#) to respond to their needs.

We also cannot ignore the fact that right-wing, authoritarian leaders enjoy a large support base in many parts of the world. Much stronger resistance to the current system is needed. But where will resistance to the current development paradigm start? How will it gather momentum? Will we in the NGO sector be able to lead the resistance? Or at least play a supportive role in it?

#### **NGO coaptation and social justice**

Those of us who are in the organised and funded NGO sector sometimes tend to overlook the fact that there are many social justice movements outside of our sector. Many of these movements are small and operate within specific local contexts. Several of them choose to retain their independence and autonomy by not taking funds from donors. Some of them are [self-organised groups](#) of workers who support each other and resist abuse. It is important to acknowledge that while we are busy managing our projects and advancing our rights-based agendas, we sometimes lose the ability to hear voices of people who do not fit into our framework of analysis. Anti-trafficking activism is full of these oversights. While trying to identify trafficked persons all too often we ignore the fact that the so-called trafficking victim's self-definition might be very different from ours.

While NGOs have proliferated over the last two decades, the gap between local social justice movements and NGOs has also widened during this period. Many NGOs now focus exclusively on providing services to

groups of disadvantaged or abused people who are neglected by the state. They provide essential services where the state does not, often with funding support from foreign donors, at the same time as these states further policies of exclusion and repression. Many NGOs therefore end up tacitly supporting, rather than effectively challenging, the still rising global tide of neoliberalism and authoritarianism.

Some NGOs have made a strategic choice not to critique the state for fear of repression or co-option. However, opportunities to develop oppositional and people-centred politics within the NGO space have also shrunk. Community-based groups and small NGOs can be very precarious, and their survival increasingly depends on their capacity to execute projects which have been designed elsewhere. These projects tend to be conceptualised in ways which leave no space for the political education of the implementing team and no time to listen to the questions and analyses of community workers. Larger NGOs such as GAATW are increasingly obliged to mimic this managerial model in order to prove our efficiency. In the process, valuable opportunities for local and experiential knowledge production, rigorous social analysis, and collaborative movement building are lost. The mind-boggling challenges around us are artificially contained within the frame of victim assistance and project management.

This dilemma is not specific to anti-trafficking work, but applies to the NGO sector more broadly. Once you are inside a frame – that you may not have created or labelled – your main task is to oil it and keep it alive. Perhaps we should instead steal a little time to ask ourselves, on whose side are we and in whose interests are we working? If we think we are on the side of working people, then we need to start walking the long and difficult road with them.

## INTERVIEW

# Some observations on the anti-trafficking field

Helmut Sax with Neil Howard

Neil Howard (BTS): Helmut, you have nearly two decades of experience as both an anti-trafficker and a scholar of anti-trafficking. What's your take on where the field is at?

**Helmut Sax:** The ultimate goal of anti-trafficking is not the prevention of trafficking, but the prevention of exploitation. Conceptually, trafficking should be regarded as no more than a preparatory act, something that creates or maintains situations of dependency which make people vulnerable to being exploited. The added value of making trafficking a criminal offence is precisely that it enables us to address these situations – what I call the ‘logistics’ of dependency. But doing so means working much more closely with wider efforts to end exploitation. For example, when it comes to supply chains, we shouldn't just be focusing on monitoring but instead need to address poor working conditions, weak labour rights, and all the underlying cause factors that lead to a need for monitoring in the first place.

Neil: So why is that not happening?

**Helmut:** Ironically, it's partly attributable to the fact that, as a criminal offence, trafficking is typically addressed through the criminal justice system. This leads to a heavy emphasis on investigation, arrest, and prosecution, with the obvious consequence that individual criminals are targeted instead of the exploitative circumstances in which they operate. In practice, this sees states work hard to increase their numbers of trafficking investigations and convictions, but their actual focus really should be on addressing exploitation.

Neil: Indeed. I know that much of your work has focussed on children and their rights, so I'd like to

ask you to explain the particular place that children have in the anti-trafficking universe.

**Helmut:** The trafficking definition has completely failed in relation to children. The three elements of the general definition (‘recruitment’, ‘means’, ‘for the purposes of exploitation’) only make sense when considered together. However, with their problematic understanding of childhood, the drafters of the Palermo Protocol decided to skip the ‘means’ element as a requirement for establishing trafficking among children. As a result, in principle, any recruitment or transportation of children with the mere intention of exploiting them legally constitutes child trafficking. This means that basically all child labour situations, even those where parents have put their children to work, would equate to ‘trafficking’ – which includes dozens of millions of cases worldwide! This is of course both meaningless and impractical.

In addition, there is another issue here concerning the relationship between child trafficking and the ‘sale of children’. At around the time that the Palermo Protocol was being drafted, lawmakers were also working on an Optional Protocol to the UN Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography (OPSC). And given how closely related these documents were, insufficient attention was given to the complementarity between them.

The OPSC addresses situations of sexual exploitation of children. It focuses on ownership-like control by adults for remuneration, which may include situations of child abuse shared as pictures or video clips, illegal practices in the context of child adoption, and prostitution. Clearly, there are overlaps

between these situations and those typically discussed in a trafficking context. Yet the conceptual starting points for the sale of children and child trafficking are different. Child trafficking aims at the exploitation of the services of the child, while the sale of children focusses rather on the transfer of control for remuneration, irrespective of what happens next to the child. Not every case of illegal child adoption, for example, is a child trafficking case, but the 'sale' of a child (however problematic that term) may be one of the 'means' used in a child trafficking case. In practice, there is often confusion about these concepts, especially in relation to adoption and more recently also in discussions about surrogacy.

**Neil:** Complicated and challenging stuff. But, without wishing to trivialise, surely from a victim perspective this is splitting hairs?

**Helmut:** Sure, from a 'victim' perspective, all such narrow categorisation is irrelevant. And it would be unnecessary if we were to follow a comprehensive, human rights-based approach to organising our societies. We'd all enjoy the rights to life, integrity, liberty, adequate standards of living, health, educa-

tion, work, and so on. In fact, in many respects this is the key issue – anti-trafficking has to a large extent focused only on the perpetrator side of things due to the initial framing of trafficking as a criminal offence. Perhaps the biggest challenge for discourse and practice is therefore (still!) the turnaround to adopt a more holistic rights-based approach.

In my view, if we are to achieve that, it could be helpful to look at the related issue of domestic violence. Over the last decades, huge progress has been made globally in establishing violence against women and children as issues that are not solely the concern of the private sphere. They are in fact matters of state concern and responsibility, with clear human rights obligations to protect victims, prevent abuse, investigate and provide redress. Although the situation is still far from ideal, public and political discourse has shifted significantly. That leads me to ask what lessons the anti-trafficking field can learn from that shift. How can we be sure that trafficking is seen as a structural issue, one that is really about exploitation? And how can we be sure that people recognise the ubiquity of this exploitation in the way we now do with domestic violence?

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*This interview has been edited and condensed for clarity.*



# The master's tools will never dismantle the master's house: time to rethink the Palermo protocol

Sam Okyere

On 15 July 2020, the United Nations special rapporteur on trafficking in persons delivered her annual report to the UN Human Rights Council. [Her report](#) amplified numerous other calls for a shift in focus away from law enforcement and towards human rights and the protection of victims. More strikingly, her report also noted that a new international instrument may be required, since the Palermo protocol may not be sufficient or effective when it comes to realising these human rights goals. While this call is still presented in diplomatic language it isn't that hard to read between the lines: the current anti-trafficking system isn't working.

This piece takes this welcome intervention as its point of departure. It suggests that the Palermo protocol is irredeemably compromised and must be dismantled, rather than reformed. We instead need to strengthen existing international instruments focusing upon workers' and migrants' rights and protections. Any new instrument which is developed needs to avoid the trap of making crime fighting a primary goal.

Since its adoption in November 2000, the Palermo protocol has attracted widespread support. It has received an impressive number of ratifications by UN member states, provided a foundation for innumerable national and international NGOs, and helped to place 'human trafficking' at the centre of political conversations across the globe. It [has been described](#) by Stephen Biegun, the US deputy secretary of state, as proof of the tremendous achievements that can be realised when the international community comes together to combat human rights abuses and promote the rule of law.

Supporters of the protocol acknowledge that it has imperfections and limitations, but passionately counter that any problems are outweighed by both its current contributions and, crucially, future potential. Despite the fact that it has now been around for two decades, supporters continue to maintain that any flaws should be regarded as 'blips' or 'teething issues'. Instead of being treated as signs of failure, or as evidence of the need for a course correction, problems are instead presented as a reason to reform the system from within since this is the best path for accelerating and realising the protocol's full potential.

## A new dawn?

This continuing optimism is entirely misplaced. We now have twenty years of examples demonstrating that its design flaws and implementation failures are not blips or aberrations but are instead core features and functions. As the special rapporteur and other commentators lament, only a few hundred out of the purported 20 million people affected by trafficking [have received support from states](#). While global estimates of trafficking are notoriously unreliable, not least because of basic definitional problems, the difference between tens of millions (seven zeros) and hundreds (two zeros) should give even the most ardent supporters pause. In theory, parties to the Palermo protocol are committed to protecting and respecting the rights of trafficking victims (Article 2b). In practice, this is little more than rhetorical fantasy.

The primary role of the Palermo protocol has been to provide legitimacy to oppressive immigration and mobility controls; a whitewash for anti-immigration programmes as the scholar Nandita Sharma [observes](#). These include [border externalisation](#)

measures by the European Union, United States and Australia, which are today conveniently tagged in humanitarian terms as measures to prevent trafficking. It has also helped justify questionable raids on brothels and other workplaces in the name of rescuing trafficking victims, and the creation of false boundaries between labour exploitation in the formal and informal sectors. The protocol frames trafficking as a subset of ‘illegal’ immigration or ‘informality’, and so anti-trafficking raids mainly target car wash bases, nail bars, brothels and other ‘informal’ spaces. The plight of migrant domestic workers, construction workers, and others who move through state-sanctioned sponsorship visas and other perfectly legal channels to work legally in the formal economy is rarely the focus of anti-trafficking campaigners’ advocacy. This is despite the evidence that many working under such formal or legal schemes

are little more than convenient fig leaves for the pursuit of anti-migration and anti-sex work interests which were the driving forces behind its creation. Punishment was always far more important than protection. The governments who championed the protocol are never going to break away from its focus on law enforcement and crime and instead embrace social justice and human rights protections. They have no incentive to take the leap, and this is not what they signed up for in the first place. They did not provide a tool that can be used to challenge them or to dismantle their house.

#### The perils of false consensus

The harmful consequences of clinging to the false hope of future reform is underscored by the findings of my research with working children over the last decade. For children in their late teens the

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“The Palermo protocol incentivises NGOs to cast islanders, parents, and fishermen as traffickers and enslavers of their children.”

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are subjected to wholesale rights violations, including confinement, passport confiscation, non-payment of wages, and physical violence or its threat.

‘Saviourism’ and crass racialised practices have also become its hallmark. Campaigners evoke the memories and imageries of the transatlantic slave trade for antitrafficking advocacy while conveniently ignoring the deleterious legacies of the transatlantic slave trade, colonisation, imperialism, and other historical injustices which underpin the misery of many of those black and brown people deemed most susceptible to precarious migration, exploitative labour, and trafficking.

These problems are not accidental. References to rights and protections found in the Palermo pro-

Palermo protocol is especially problematic. The construction of child trafficking effectively denies them their agency and capacity to make relatively informed choices about entry into work, taking up apprenticeships and other opportunities erroneously labelled by some as ‘child trafficking’. Furthermore, the definition of child trafficking per the protocol’s parameters is an exercise in legal abstraction which has little or no connection to many working children’s lived experiences. Core elements such as ‘movement’, ‘harbouring’, ‘transfer’ ‘receipt’ and ‘exploitation’ are highly tenuous. What distance qualifies as ‘movement’, for example? A trip to the neighbour’s house? A trip to the next village or town? One which involves crossing regional or national borders? Where do we draw the line?

This lack of clarity coupled with the protocol's dictate that anyone under the age of eighteen is incapable of consenting to their involvement in work means that what counts as 'exploitation' and 'child trafficking' is heavily reliant on the personal, cultural, political and other value judgements or interests of anti-trafficking NGOs and their staff. These are not objective assessments, but they can nonetheless have profound consequences. As discussed in a forthcoming paper and in fieldwork planning activities for the European Research Council-funded project *Modern Marronage*, this has been disastrous for indigenous communities living on and around Lake Volta in Ghana. Over the past five years these islanders have been repeatedly raided by anti-trafficking NGOs and state security personnel under the pretext of rescuing children allegedly trafficked for fishing in the waters surrounding the islands.

Residents present harrowing stories of brutality and trauma from these raids, which have resulted in what they describe as the abduction of their children by anti-trafficking NGOs and the police. These NGOs have been able to leverage their connections to the larger world to construct sensational stories about 'rescuing child slaves' on the lake, and thereby construct the terms of engagement in ways which ensure that the underlying issues remain poorly understood.

Few questions have been raised about the appropriateness of the NGOs interventions. So too has there been hardly any scrutiny of the accuracy of their claims, which include assertions that there are several thousand child trafficking victims in these communities. Some NGO staff privately acknowledge that the children working on the lake and elsewhere are not 'child slaves' or 'child trafficking victims', but rather child labourers or children driven by precarious socio-economic circumstances into work. But this is not something which they can

raise in public without risking their access, audience, and resources.

And yet, anti-trafficking modalities driven by the Palermo protocol do not encourage household- and community-based social welfare programmes, micro-credit schemes, provision of educational facilities, or other measures that may provide alternatives to fishing for children and their families. Instead, the criminal justice approach driven by the Palermo protocol and the Ghana Human Trafficking Act modelled on it incentivises NGOs to cast the islanders, parents, and fishermen as traffickers and enslavers of their children. This framing provides justification for the raids and attracts funding for 'rescue shelters' and other facilities for children. The outcomes of all this are hardly all positive.

The Palermo protocol has been shockingly dismal as a human rights instrument for such children and their families. The same is true when it comes to sex workers subjected to mindless raids, migrants forced to undertake precarious journeys due to anti-trafficking related border controls, those ostensibly 'rescued' from traffickers but subsequently deported as immigration offenders, and many others. To paraphrase Audre Lorde, it may allow some gains and temporary victories, but it will never allow an unequivocal human rights-based approach to migration and labour exploitation given its interests in criminalising some forms of migration. On the occasion of its twentieth anniversary, it is time to admit that the protocol is irredeemably flawed and has to be dismantled. In its place, we need to strengthen existing international instruments focusing upon workers' and migrants' rights and protections. Better still, we need to develop a new instrument which completely avoids the trap of making of crime fighting a primary goal.

## INTERVIEW

# How we got here: the story of the Palermo protocol

Marjan Wijers with Joel Quirk

**Joel Quirk (BTS):** The Palermo protocol was finalised over 20 years ago, and for many people working in the fields of trafficking and labour exploitation today it has simply always been there. But that's not actually the case. What was the field like before there was a Palermo protocol?

**Marjan Wijers:** In the 1980s feminist groups with a background in development cooperation started working on trafficking in the Netherlands. They actually got into it because they were looking at sex tourism. Through that work and their contacts with Asian women's organisations they came to realise there was a second flow of women the other way around, coming into the Netherlands and other European countries to do sex work but also as domestic workers and mail-order brides. That's how the Foundation against Trafficking in Women (STV) was founded in 1987.

We mainly worked with migrant women in the sex industry. Most of them were undocumented. Some originally planned to do a different sort of work, like domestic work or modelling, and ended up in the sex industry. Others came with the intention of doing sex work and ended up in abusive and forced working conditions. From the start, for us, it was not about innocent women forced into prostitution. It was about addressing exploitation and abuse of migrant women in the sex industry regardless of whether they had been forced into it or not. In fact several of our clients wanted to continue to do sex work, but now for themselves.

If memory serves, at that time only the Netherlands and Germany had groups working on the issue of migrant sex workers and trafficking. And, at that time, really nobody cared. We were talking about

migrants. We were talking about foreign women, primarily from southeast Asia and Latin America, and women of colour. And we were talking about prostitutes. We didn't yet use the term sex worker, that came later.

Our clients didn't have rights, as women, as migrants and as prostitutes. They had fewer rights and opportunities than men at home. And they didn't have rights here in Western Europe because most of them were undocumented and, above all, they had no rights because they were whores. I explicitly use the word 'whores' as it really didn't matter whether they made their own decision to do sex work or whether they had been forced into it. 'Once a whore always a whore, who do you think will care?' – that's what their exploiters told them.

And that is precisely what happened. Even if they went to the police, cases weren't taken seriously. They were just deported right back to the situation they had tried to escape from, and the cases weren't prosecuted. The first actions we undertook together with women who would now qualify as 'victims of trafficking' pushed for things like temporary residence permits, the ability to press charges, and for cases to be actively investigated and prosecuted. I think it was more or less the same in Germany.

Interest in trafficking rose quickly with the fall of the Berlin Wall in 1989. There were a number of reasons for that. I do not want to be cynical, but I am convinced that one was that the victims changed from women of colour to white women, Eastern European women. So from 'them' to 'us'. The other, I think, was that we didn't know how fast we could rebuild the wall. Once the wall fell everybody could travel freely again. That was nice, but, of



course, never the intention. And then there was the fear that we would be flooded not only by Eastern European migrants but also by the Russian mafia. Trafficking provided the perfect justification for an anti-migration agenda in the name of combating trafficking, literally under the banner of ‘if they can’t come, they cannot become victims either’. A lot of trafficking money was spent on rebuilding the Polish borders, for instance.

These factors helped push trafficking on the political agenda. It wasn’t so much that people became more concerned about the rights of sex workers or migrants, or about protecting sex workers from abuse. It was mostly that the argument of trafficking perfectly served a number of state interests, which became urgent after the fall of the Berlin Wall.

Preceding all of this was the question of what to call these sorts of abuses. Let me say it like this: if we had known the history and the inherent flaws of the concept of trafficking back then, we never would have used it. What we should have done was talk about forced labour, including forced sexual services, slavery-like practices and servitude. We should have used concepts that describe the living and working conditions in which people find themselves. These are concepts that are defined in international human rights law, and they’re kind of neutral. But at that time we weren’t aware of all that, so we ended up falling back on the 19th-century Victorian concept of trafficking with its focus on the purity and victimhood of women and the protection of national borders. In doing so, we unwittingly imported a highly biased concept, dividing

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At the same time, there was the second feminist movement. That brought attention to sexual violence and the right of women to decide over their own bodies. And since the 1970s sex workers had started to organise – that was also a movement that came up. So on the one hand we had the sex workers’ rights movement claiming the right to choose the work you want to do and not be punished or criminalised for it, and on the other hand the anti-trafficking movement claiming the right to not be forced to do work you do not want to do. Both claims are about human rights, the freedom to choose your own profession and the right to be protected from forced labour, and both should be respected. That’s how we looked at it – in our view pro-rights and anti-violence were two sides of the same coin. So from our start we worked together with the Red Thread, the Dutch prostitutes rights organisation.

women into innocent victims in need of rescue and guilty ones who can be abused with impunity, but also with racist and nationalistic overtones.

Despite efforts to counter these flaws, this inheritance continues to define the debate on trafficking today, as exemplified by the distinction the UN Trafficking Protocol makes between so-called ‘sexual exploitation’ and ‘labour exploitation’ and its focus on recruitment and movement rather than working conditions. Historically, trafficking has been used to control women’s sexuality and mobility and to justify oppressive measures against sex workers and migrants, rather than protecting their human rights. Already in the 1990s it had become clear that this was what was happening. So when we started the negotiations on the trafficking protocol, we were very much aware of the problems of the concept. And we tried to address them.

Joel: Did you enter into those negotiations believing that they were an opportunity, or did you mainly approach them with trepidation and anxiety? Was it already clear what the fault lines would be, or did those surprise you?

Marjan: There had already been a lot of discussion around the definition of trafficking by the time it reached the top of the international agenda. Is trafficking only about women and children? Does trafficking only take place across borders or also happen within borders? Is trafficking only about forcing women into prostitution or is it also about abusive recruitment practices for domestic work and other kinds of labour? Is it only about recruitment or also about abusive and slavery-like working conditions? Pretty much all the questions and issues that played a role in the negotiations on the trafficking protocol were already points of contention in the larger political debate.

So there was a tremendous amount of confusion about what the concept was. And even if people agreed that the core of trafficking was coercion or force, there wasn't consensus about what 'force' referred to, especially in relation to sex work. Did it refer to both abusive conditions of recruitment and work? Or did it refer solely to the way a woman came to be a prostitute, as a result of her own decision or forced by others (thus excluding women who consciously decided to work in the sex industry but who were subject to force and abuse in the course of their work)? And then some viewed prostitution itself as a violation of human rights akin to slavery. In this view no woman is able to voluntarily consent to sex work and any distinction made on the basis of consent or the will of the woman is meaningless.

We knew all these discussions were taking place, so we knew the dangers and we knew how much the concept was mixed up with the anti-prostitution and anti-migration agendas. We also knew it was sexist in the way that it linked the right of women to be protected against violence with their sexual innocence or purity. So we knew exactly what was wrong. Not everybody did perhaps, but the Glob-

al Alliance Against Traffic in Women (GAATW) – which was founded by Thai women groups and STV over the course of the 1990s – certainly did. A number of human rights organisations did, and sex worker organisations of course were very conscious of it from the very beginning.

Joel: Could the Palermo protocol have turned out differently? Or did it seem more or less fixed from the beginning, and what you got was roughly what you expected?

Marjan: We were not that optimistic. We knew what the problems were, and we knew how the concept was used against sex workers and immigrants. So we were well prepared in that sense. We had a number of aims and we organised across movements. We brought anti-trafficking, human rights and sex workers' rights organisations and activists together, led by the International Human Rights Law Group and GAATW. I took part on behalf of GAATW and the Dutch Foundation Against Trafficking in Women where I worked at the time.

The composition of this alliance was really important in that it was the first time that these three movements worked together in a joint lobby. Especially the combination of anti-trafficking and pro-sex workers' rights groups and activists was radical, as it bridged the historical gap between the two movements caused by the persistent conflation of trafficking and sex work.

For the sex workers' movement it was really a difficult position because they were clearly against the whole concept of trafficking. They had already suffered a lot from it. At the same time, we all knew that it was important to try to do as much damage control as possible. So the negotiations on the protocol were not like, 'Oh, this is a beautiful chance.' They were like, we already know the damage and we know that it can become even worse, so what can we do to control the damage and try to make the best of it? We prepared our documents together, went to the negotiations together, and lobbied together.

Like the states, NGOs were deeply divided on how trafficking should be defined – that is, what practices should be combated. While we made a clear distinction between trafficking and sex work and held that conditions of forced labour in all industries should be addressed, the other NGO block, led by the US-based Coalition Against Trafficking in Women (CATW), regarded all sex work as trafficking and wanted the protocol to combat prostitution as such.

By the time of the negotiations on the protocol, CATW had been around for a while and they had gained a lot of influence. I attended one of their conferences in New York at the end of the 1980s. At that point they hadn't a clue about trafficking or the position and experiences of migrant women. They were mainly focused on violence against white women and pornography. I remember Andrea Dworkin, like a priestess sweeping a whole hall of women into hysterics about a woman being forced by her employer to look at *Deep Throat*, a famous porno film at that time. But during the 1990s they got a lot of money from conservative governments and became a rich, important, influential anti-prostitution lobby with chapters in a number of Asian countries.

If I remember correctly, they were not there for the first session of negotiations on the protocol, but from the second session onwards they were there. And from that time on, there were two opposed NGO-lobbying blocks. Our block, operating under the name of Human Rights Caucus, advocated a broad and comprehensive definition of trafficking with coercion as the core element. We wanted to include men as well as women and children, to go beyond prostitution and include all sectors of work in which people could end up under slavery and forced labour-like conditions, and to include both cross-border and internal trafficking. We wanted to go broad as we thought this might neutralise the problematic parts of the traditional concept of trafficking.

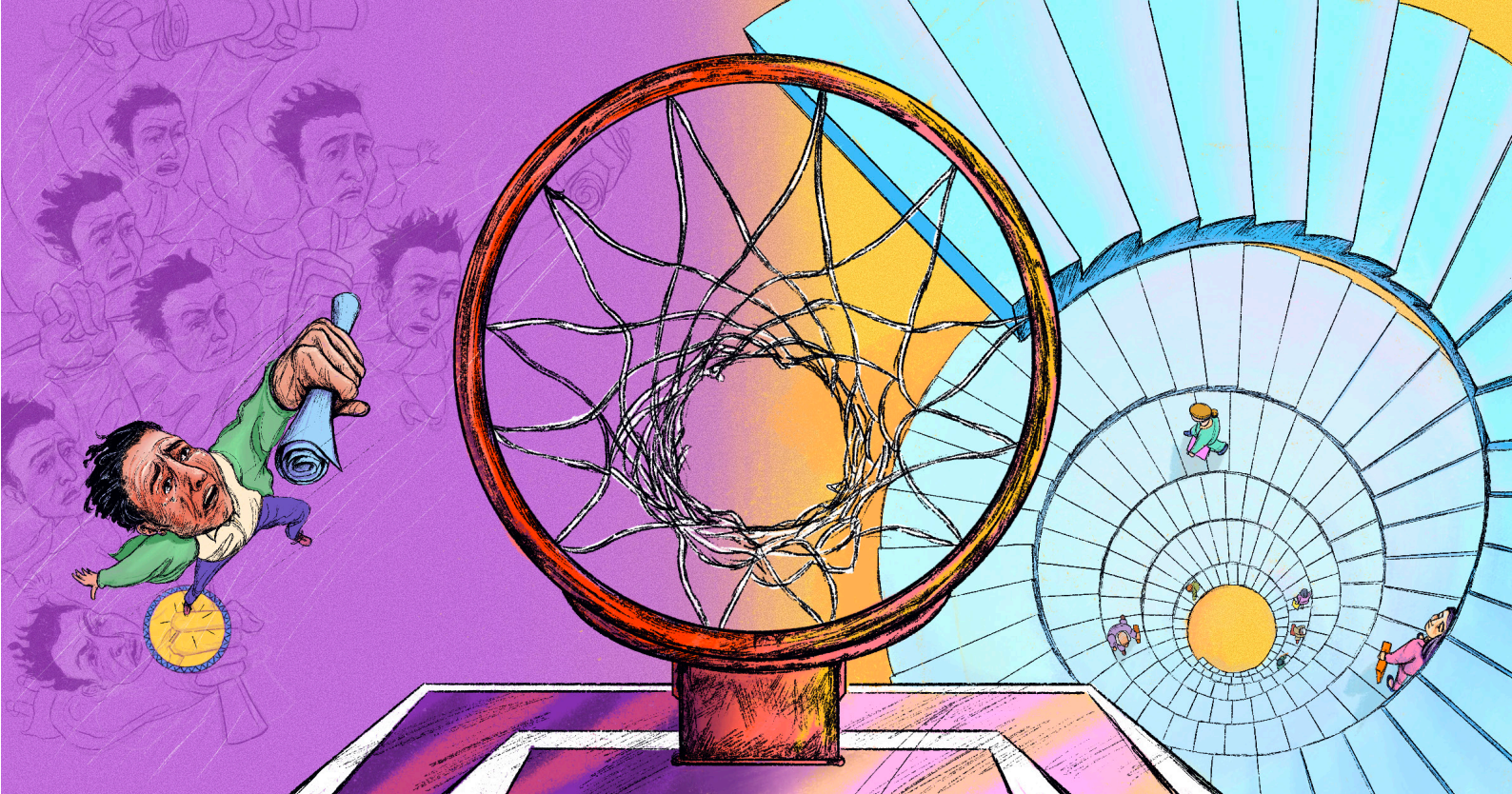
The other block, which next to CATW included among others the European Women's Lobby and the French International Abolitionist Federation,

wanted a protocol that defined all prostitution as trafficking, and that only applied to women and children. Significantly, they operated under the name of International Human Rights Network, kind of copying our name and adding to the confusion about who was who. Those were the two opposing positions, and the final definition is a clear compromise between those two positions. On the one hand it makes a clear distinction between sex work and trafficking. It covers women, men, and children, and includes all labour sectors rather than just the sex industry. On the other hand, "exploitation of prostitution and sexual exploitation" is singled out as separate and different from what came to be called 'labour exploitation' – that is forced labour, slavery-like practices and servitude in other industries. And we've seen the harmful effects of it.

*Joel: What you've said so far reflects the commonly told story about the Palermo negotiations, which is essentially an argument between two opposing coalitions of NGOs and civil society voices. And I understand that that was a key flash point. But it has always struck me that this portrayal misses out on the role of states. Governments always have the final say in these kinds of negotiations – civil society doesn't get to write its own international law. Could you say more about the governmental positions during the negotiations?*

*Marjan:* The fight between NGOs was more or less also reflected in the position of governments. It was a long time ago, but from what I remember, I think there were three issues that divided the states – and not always along the same lines. One was the moral issue of prostitution and the idea that all prostitution is trafficking. States started out with different positions on prostitution, but I think they found it relatively easy to say, 'Even if we do not agree about prostitution, we do agree about coercion, so let's limit this treaty to situations of abuse and coercion and not prostitution as such.' That more or less solved the moral question, though the moral issue comes back in other articles, for example the one on addressing demand.





Then I think there was a difference regarding borders. Rich and poor countries were more opposed when it came to migration. For the rich countries, especially, it was really important to include articles in the protocol about protecting borders, while for the poor countries the remittances labour migrants sent home formed an important part of their national income. The third point was rights of victims. Sending countries were much more inclined to include victim protection provisions, while receiving countries were not inclined to do that at all.

That's also reflected in the protocol. There are a number of provisions on protections for victims, but they are not obligatory. Victim protection is up to the discretion of the states, whereas all the law enforcement provisions are mandatory. And there, I think, the NGO lobby really failed. Our faction felt that even if we didn't agree with the others on prostitution, we should be able to agree on the need for victim protection provisions. But the other side didn't want to cooperate.

**Joel:** Why not?

**Marjan:** Because they didn't want to work with us, in part because of how polarised we all were and in part because – and this is probably nasty to say – it wasn't in their interest. We were the ones working with victims. We were the ones who wanted victim

protections. They had a totally different, ideologically driven, agenda. They wanted to combat prostitution. And what the actual impact of that was on women, on sex workers, on victims – I don't think they really cared.

**Joel:** The Palermo protocol is what gives us the internationally agreed definition of trafficking. At the heart of it is this idea that human trafficking is for the purpose of exploitation – that is the hinge of the whole treaty. Yet exploitation is not defined – there's just a non-exhaustive list of examples. Why doesn't the protocol at any point actually say what exploitation is?

**Marjan:** They couldn't agree upon it.

**Joel:** They couldn't agree on it because people wanted very different versions, or couldn't agree on it because exploitation is just really hard to define?

**Marjan:** What I remember is that there were a number of states and international experts, like the UN High Commissioner on Human Rights, the Special Rapporteur on Violence Against Women, the International Labour Organisation, and ourselves who said don't use the word exploitation. Stick to forced labour, servitude, slavery-like practices, etc., which are accepted and defined concepts in international human rights law. They also advocated to delete the



word 'sexual exploitation' because it is undefined, controversial, and unnecessary. The Special Rapporteur on Violence Against Women, for example, noted that the term 'sexual exploitation' could be interpreted in very different ways, depending on whether you believed that prostitution constituted 'sexual exploitation' per se, or whether it referred to situations of forced labour, servitude or slavery-like practices, which could happen in the sex industry but also in domestic labour or servile marriages.

And then there was the other group of states, which included the US, who wanted to have exploitation of prostitution and sexual exploitation in the protocol independent of the use of deception, force or coercion. They really wanted to have that in the protocol. I remember us writing a letter to Madeleine Albright, the US secretary of state at that time, to try to discuss the US position with her. It was signed by a whole bunch of experts from different organisations in the US and elsewhere, and it argued that there was consensus on limiting the protocol to forced situations and warned that expanding it to include voluntary prostitution would mean that several countries would refuse to sign it.

The compromise was to put both of them in. The phrase 'for the purpose of exploitation' was kind of the general term, and then under that heading you could put both exploitation of prostitution and forced labour, etc. The terms 'exploitation of the prostitution of others' and 'sexual exploitation' were intentionally left undefined, so states could decide for themselves how they wanted to address prostitution in their domestic laws. It was a typical political compromise where both parties more or less got what they wanted.

**Joel:** You mentioned the harmful effects of singling out sexual exploitation as different from forced labour, slavery-like practices and servitude. What do you mean by that?

**Marjan:** The inclusion of exploitation of prostitution as a separate purpose from forced labour, etc. reinforced the historical obsession with prostitu-

tion and fed into the old conflation of trafficking and sex work and the preoccupation with the purity of women. It not only implies that sex work cannot be labour, but it also falsely suggests that forced labour cannot exist in the sex industry, consequently depriving sex workers of protection against the practice. The ILO had always considered forced prostitution as a form of forced labour, so separating it really is a step backwards.

Forced labour and slavery-like practices are not defined by the type of the work but by the forced and unfree working conditions. According to the definition in the protocol this should also apply to trafficking. Nobody would ever argue that a domestic worker cannot be a victim of trafficking simply because she knew she would do domestic work or had worked as a domestic worker before. But when it comes to sex work you see that in practice many states restrict force to refer only to forcing somebody into prostitution and not to forced working conditions.

The effect is that in many cases, instead of the offender standing trial, it is the victim who has to prove her 'innocence', thus shifting the focus from the acts of the trafficker to the morality of the victim. This distinction between 'good' women who deserve protection and 'bad' women who forfeited their right to protection against abuse is one of the major obstacles to combating trafficking. It not only implies that sex workers can be abused with impunity, but also that the right of women to be protected against violence and abuse is determined by their sexual purity or 'honour'. This is not only harmful for sex workers, but for all women.

This sex work exceptionalism also paved the way to completely opposite strategies. Where everybody agrees that it's important to strengthen rights and support unionisation, organisation, etc. in order to combat forced labour or abusive labour conditions, the exact opposite strategies are promoted when it comes to combating trafficking in the sex industry. There further criminalisation is advocated, which adds to the stigma and leaves sex workers with less instead of more rights. This is reinforced by the arti-

cle in the protocol that calls on states to “discourage the demand that fosters all forms of exploitation”. This of course is interpreted as solely applying to sex work and laid the foundation for the so-called ‘end demand’ campaigns that call for the criminalisation of clients of sex workers.

The separation of sexual exploitation from the other purposes also made it crucial to include the coercive means in the protocol. Without that it would have become a treaty against prostitution, because it would have simply been recruitment, transport, etc., for the purpose of exploitation of prostitution, independent of the use of force or coercion. If the purpose would have only been forced labour, slavery, etc., you wouldn’t have needed the coercive or deceptive means as these are inherently coercive. What we’ve seen in practice is that a number of

rights point of view that is of course unacceptable. In fact, it mirrors the first treaties on trafficking around 1900 which addressed the cross-border recruitment of women for what was then called immoral purposes, but explicitly left aside coercive conditions inside the brothels. That was considered to be a question of internal legislation.

**Joel:** Did you come out of the negotiations feeling happy or feeling worried?

**Marjan:** I think a bit of both. We were happy that it covered all people rather than just women and children. We were happy that it covered all sectors. We were happy that, at least in the definition and explanation of the protocol, it was clear that coercion was a core element of trafficking. That had been a big fight. So we were happy that it was clear

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countries, like Mexico, have deleted the means. And if you delete the means you turn the anti-trafficking protocol into an anti-prostitution protocol.

A fourth problem is the focus on movement. It takes away attention from the forced labour and slavery-like outcomes which constitute the actual human rights violations. This not only provides states with a justification to pursue a border control agenda under the guise of combating trafficking, but it also creates two categories of victims: those who arrive in a forced labour or slavery-like situation through trafficking and those who get there through other ways. The first group is entitled to support, even if it is pretty minimal, while the second is excluded from any rights because they did not get there through trafficking. From a human

that coercion, deceit, or force must be present for something to be trafficking.

At the same time, we were very concerned about the distinction that was made between exploitation of prostitution and the other purposes of forced labour, etc. And our concerns have proven to be completely justified. We were also extremely disappointed about the lack of human rights protections for trafficked persons. People tend to think the protocol is a human rights treaty, but very obviously it is not. It is part of a treaty on organised crime, it is a law enforcement instrument.

**Joel:** It seems people have done a lot of work to expand the definition of trafficking when it comes to sex work, but they’ve been reluctant to think more

broadly in other areas. They've baulked at applying it to migrant workers, or workers in global supply chains, for example. Do you agree with that? Do people try and apply trafficking broadly when it comes to sex work, and then narrowly when it comes to migrant workers because it's otherwise just too politically inconvenient?

**Marjan:** Well, exploitation and the availability of cheap and exploitable labour is in fact the core of the capitalist system. If we would really want to address exploitation in other industries, it would touch our own interests in cheap services and products. We would have to pay more for our mobile phones, for our vegetables, for having our houses and offices cleaned, etc. It is therefore much more attractive to focus on sex work, which fits a moral rather than an economic agenda and is easy to separate from our daily lives and interests.

Addressing exploitation would require a social justice agenda. It would require improving the economic, social and legal position of migrants for example. Focusing on prostitution, on the contrary, makes it possible to reduce the issue to a crime and punishment framework. It stops short of trying to address the economic system. And, of course, rescuing innocent maidens is much more sexy. All this once again exposes how flawed the whole concept is. We spend millions to combat trafficking while the forced labour treaties, which already stem from the 1930s and 1950s, have never gotten such attention. That hasn't happened by accident.

**Joel:** Would you say the problem lies more in the protocol or what governments do with the protocol?

**Marjan:** You can't separate them. The protocol was a political compromise between two opposing views and interests. There was a reason for making that compromise, and those reasons are also reflected in the way it is applied. So I don't think you can really make that distinction. A lot of states are dependent on migrant labour, and it would be against their interests to address abusive conditions of migrant and other low paid workers. So they're not very prone to

do that. Besides, it's much easier to focus on prostitution, borders, and the morality of women. That is a much better fit with state interests than addressing the abusive labour conditions experienced by migrant and other low-paid groups of workers keeping your economy going. So why should you?

**Joel:** Have you become more optimistic or pessimistic in the time that's passed regarding the value of human trafficking as a way of addressing questions of exploitation?

**Marjan:** I think what we feared has happened. It has done very little to address actual human rights violations or the causes of the exploitation of people under forced labour or slavery-like conditions. Nor did it do much for victim rights because, of course, abuses do exist. Nobody denies that there are serious human rights abuses of people, but the protocol does little to address them. On the contrary, it backs measures that make the abuses worse. Repressive measures always have a negative impact on the most vulnerable groups. The more you criminalise or stigmatise groups, the more vulnerable you make them for abuse and the more you close off their access to justice.

I would say the situation has worsened for quite a lot of groups. That's certainly true for sex workers, but also for many migrants. The Palermo protocol provided states with an instrument to justify repressive measures that put people in more vulnerable positions. And at the same time, it didn't do much to improve the situation for victims of abuse. In most states you have to cooperate with the prosecution in order to benefit as a victim, which means that you have to put yourself and your family at more risk. And if you're a migrant you'll likely be deported once you're no longer useful as a witness. We also know that criminal law is not made for victims. Criminal law is an issue between states and perpetrators. Victims are basically nothing more than a fingerprint, something you put in a drawer and take out if you need evidence. That's it. It's possible that the Palermo protocol did a little bit for a small category of victims, but it didn't make things

better for the majority of them, and it did harm to much bigger groups.

During the negotiations we advocated that trafficking should cover both abusive conditions of recruitment and abusive conditions of work. The protocol does not do this. Trafficking under the protocol is limited to the recruitment process, the way people arrive in exploitative situations. This means that we have millions of people in conditions of forced labour all over the world who didn't arrive there through trafficking, and because they didn't get there through trafficking they are completely rightless. It's like combatting the slave trade but not slavery. If you were born a slave because your parents were slaves that's fine, just as long as you didn't get there through the slave trade. We tried to convey the need to combat the exploitation itself, but that didn't happen.

Joel: So where do we go from here? Some people suggest that there should be a follow-up convention that would affirm and extend the Palermo protocol. Others argue that trafficking has created so many problems that it's best to just scrap it and try something else. What's your view? Is it worth staying in the anti-trafficking tent and seeking to reform from within? Or is it better to pick a different battlefield and fight using a different set of concepts?

Marjan: We tried those strategies. We tried to get rid of the whole concept of trafficking and we weren't successful. Once you've opened up Pandora's box, you know, it's out of your control. It's there to stay. There are too many other interests attached to the concept of trafficking to get rid of it. And those aren't the interests of the people who are affected.

We also tried damage control. I still flatter myself with the idea that at least we did some damage control in the negotiations. It could have been worse, but that doesn't make it good. And I must say that after 30 years of damage control alone, I'm tired, and it's not only me. Doing damage control is not the most inspiring thing to do in life.

My conclusion is that it is much better to work on rights. I see two ways forward. One is to work on sex workers' rights, migrants' rights, etc. It's difficult and we live in repressive times. We are in a conservative, repressive period of history. It's not only sex work – it's sexual and reproductive rights in general. It's not only migrant workers – it's migrants, refugees, etc. All human rights are under pressure. But at least they used to be seen as something to strive for. Now the necessity of human rights as a whole is up for debate.

Joel: I talk to lots of different campaigners, and I know people who work on reparations for transatlantic enslavement, and they never get invited into the halls of power. They're on the outside making claims that governments don't like. And I contrast that with people who work on anti-trafficking, who get invited to cabinets and boardrooms, who are given a platform, who have influence and access to centres of power. I've been wondering for a while now how addictive that access is. Changing the conversation means giving up that access, including access to funding, and that makes it hard to say, 'This anti-trafficking stuff isn't working. I need to go work on sex worker rights, migrant rights, unionising workers, and all these types of things.' How easy do you think it really is for people who work on anti-trafficking to start working on other things, given that the political profile of those other things is just far less hospitable to activism?

Marjan: It's absolutely true. And also within the anti-trafficking movement there is a big divide. There's the progressive part to which I belong, which is rights-based, and to which the Global Alliance Against Traffic in Women belongs. And there is the conservative anti-trafficking movement, which is all too happy to sleep in one bed with the state and with power.

If you want to get money, do trafficking. Don't choose migrants' rights or sex workers' rights. That's a stupid choice if you want money and in-



fluence. And of course money is addictive. When we started at the end of the 1980s nobody was interested. Once it became a big issue, I don't know how many hundreds of organisations jumped on the bandwagon.

I think that in the end, no matter how difficult it is to focus on rights rather than repression, it is the best thing we can do. I'm happy that the International Labour Organization has now picked up the issue. I think that if we want to address abuses, or if we want to address the exploitation of people in forced labour and slavery-like conditions, the ILO is a better way to go.

I would continue to try to work together with the ILO. I would put pressure on them to also include the sex industry. It took years before they included domestic workers, but they did in the end. And it's not that the world changes when an international treaty is concluded. Certainly not for domestic workers, but it is a step. It's a small step, but at least a step in the direction of rights instead of repression.

So I think it would be important for the ILO to also include the sex industry as an area of concern over labour standards.

If you can pull the ILO, it also means that you shift to much more neutral concepts. We should be aware of how tainted and flawed concepts can be, and how far reaching the influence of a concept is. Like I said in the beginning, if we had been aware of the history of trafficking and of what it meant to import that concept, we would not have done it. You really have to be very much aware of the language you use, the concepts you import, and try to look for neutral language.

Trafficking is not going away, and we won't escape the need for damage control. We have to continue to do that. But at the same time, as a movement, it's really important to connect to other rights-based movements. The migrants' rights movement, the sex workers' rights movement, and the human rights movement need to come together and develop their own, rights-based agenda.

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*This interview has been edited and condensed for clarity.*

## Contributors

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**Jennifer Bair** is Professor of Sociology and Department Chair at the University of Virginia.

**Mike Dottridge** spent 25 years working in human rights organisations, Amnesty International and Anti-Slavery International, and has worked independently since 2002.

**Joanna Ewart-James** has worked in the anti-slavery movement for almost a decade. She is currently Advocacy Director at Freedom United (previously WalkFree.org), and before that led on business engagement at Anti-Slavery International.

**Cathy Feingold** is the Director of the International Department at AFL-CIO.

**Maria Grazia Giammarinaro**, Judge (Retired), is the Former UN Special Rapporteur on trafficking in persons especially women and children, and Adjunct Professor of Human Rights Law at the National University of Ireland (NUI) Galway.

**Neil Howard** is Prize Fellow at the University of Bath and Co-founder of Beyond Trafficking and Slavery.

**International Committee On The Rights Of Sex Workers In Europe (ICRSE)** is a sex worker-led network representing 70 organisations led by or working with sex workers in Europe and Central Asia, as well as 150 individuals including sex workers, academics, trade unionists, human rights advocates, women's rights activists, and LGBT rights activists.

**Helga Konrad** is a former minister for women's issues and federal parliamentarian in Austria. She chaired the EU Stability Pact Task Force on Anti-Trafficking for South Eastern Europe from 2000-04 and was the Organization for Security and Co-operation in Europe's Special Representative for the Fight Against Trafficking in Persons from 2004-06. She now works as an independent consultant on anti-trafficking.

**Mika Leandro** is an activist with professional experience in non-governmental digital and mass mobilisation campaigning organisations, including Walk Free – the 'movement to end modern slavery' – where she was Campaigns Director. She currently works for WeMove Europe, an organisation that seeks to build people power to transform Europe for future generations and our planet.

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**Marjan Wijers** works as consultant and researcher in the field of human trafficking, violence against women, sex workers' rights and human rights. Currently she is pursuing a PhD at Essex University, focusing on human rights and sex workers' rights. As one of the pioneers of the Dutch Foundation against Trafficking in Women in the 1980s she was closely involved in the negotiations on the UN Trafficking Protocol as member of an alliance of human rights, anti-trafficking and sex workers' rights organisations and activists. Marjan was one of the co-organisers of the first European sex workers' conference in Brussels in 2005 and one of the founders of the International Committee for the Rights of Sex Workers in Europe (ICRSE), of which she was a board member from 2005 to 2013. Currently she is a member of the Advisory Board of Proud, the Dutch union of sex workers.



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